HOW TO DO LAW OFFICE STENOGRAPHY

ROBERT F. ROSE

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By ROBERT F. ROSE

Author of "The Robert F. Rose Expert Shorthand Course," "How to Become a Private Secretary," "How to Construct Shorthand Phrases," "How to Become an Expert Court Reporter," etc.

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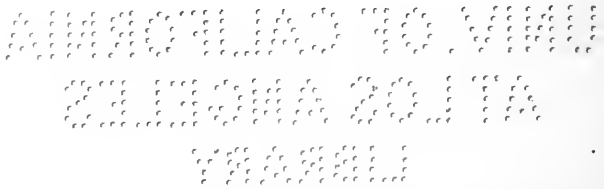

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PREFACE

The compilation of a work on legal pleadings of sufficient scope to enable a stenographer intelligently to perform shorthand work in a law office, has been somewhat difficult. So broad is the subject, and so multitudinous are the pleadings, especially in common law, that to digest them in a work of this character, in such a manner as to make them at all comprehensive, is a considerable task.

As stated in Lessons Twenty and Twenty-one of the Robert F. Rose Expert Shorthand Course, many of the states have abolished the distinction between common law and equity pleadings, and have substituted what is known as "code" practise. In Wisconsin, Iowa, New York—in fact, in most of the states—the latter method prevails. It may be asked why, in this work, no forms of pleadings have been given illustrative of code pleadings. The answer is that one who has a knowledge of common law and equity pleadings will have no difficulty with the simpler code pleadings. The reverse is not true, for one who knows only the code practise may be a very poor pleader at common law.

Because of the great number of pleadings at common law, declarations are shown in the *ex contractu* actions of Assumpsit, Covenant, Debt and Detinue, and in the *ex delicto* actions of Attachment, Case, *Caveat, Certiorari,* Ejectment, Garnishment, *Habeas Corpus, Mandamus, Quo Warranto, Scire Facias,*

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better results than does the mere theory secured in any law school.

The average graduate of a law school has little knowledge of the actual practise of law. His education has been confined to the theoretical side. He has not had the advantage which a stenographer in a law office receives in the way of securing the actual work by means of the dictation of pleadings and the other legal matters daily encountered. The stenographer, through his daily work and experience, is absorbing that which cannot be obtained in the schools. The theoretical part which comes from the book is being daily demonstrated to him by the every-day work in a law office. This combination of the theoretical and the practical results is the very best training for one who desires to be skilled in the law.

But in order to get into a law office you must make yourself of value to a legal firm. While shorthand will aid in equipping you for this class of work, it is but one of the essentials; it is necessary for you to have some knowledge of legal terminology and legal forms.

Robert F. Rose

HOW TO DO LAW OFFICE STENOGRAPHY

COMMON LAW PLEADINGS

That the distinction between common law and equity may be understood, reference is made to Page Three, Lesson Twenty of the Robert F. Rose Expert Shorthand Course. There it will be found that common law is a system of law or science of jurisprudence gathered chiefly from reports of adjudicated cases and the works of commentators. This system has prevailed in England and in the United States of America in contradistinction to other great systems such as the Roman or civil law. It consists of those principles, usages, and rules of action, applicable to the government and security of persons, and of property, which do not rest for their authority upon any express and positive declaration of the will of the legislature.

A pleading is the written allegation of what is affirmed on the one side and denied on the other, disclosing to the court or jury having to try the case, the real matter in dispute between the parties. Common law pleading has been defined as "the stating in logical and legal form the facts which constitute the plaintiff's cause of action or the defendant's ground of defense; it is the formal mode of alleging that on the record which constitutes the support or the defense of the party in evidence."

The pleadings are the statements of the parties, in

legal and proper form, of the causes of action and grounds of defense. They were formerly made by the parties or their counsel orally, in open court, under the control and direction of the presiding judge.

The term "cause of action" includes every fact necessary for the party bringing the suit to prove in order to entitle him to a recovery, and every fact that the defendant has a right to traverse. A cause of action exists when facts are such as will enable one party to maintain an action against another. The form of an action is the particular mode by which a right is required to be enforced.

The common law forms in force in Illinois are "*ex contractu*" (from contract) and "*ex delicto*" (arising in consequence of a crime, misdemeanor, or tort).

The principal common law "*ex contractu*" actions are:

Assumpsit (Lat., he has undertaken)—a form of action which lies for the recovery of damages for the non-performance of a parole or simple contract.

Covenant—an action arising from a contract.

Debt—a form of action to recover a sum certain.

Detinue—to recover personal chattels from one who acquired possession of them lawfully, but retains them without right.

The "*ex delicto*" actions are:

Case—to recover damages for injuries for which the more ancient forms of action will not lie.

Certiorari—a writ issued by a superior to an inferior court of record or other tribunal or officer, exercising a judicial function, requiring the certification and return to the former of some proceeding

then pending, or the record and proceedings in some case already terminated, in a case where the procedure is not according to the course of the common law.

Ejectment—to regain possession of real estate with damages for unlawful detention.

Garnishment—the process of attaching money or goods due a defendant in the hands of a third party.

Habeas Corpus—a writ to a person detaining another and commanding him to produce the body of that person at a certain time and place, with the day and cause of his detention, to do, submit to, and receive whatsoever the court or judge awarding the writ shall consider in that behalf.

Mandamus—a writ issued by a superior court, directed to the judge and parties to a suit in an inferior court, commanding them to cease from the prosecution of the same, because of lack of jurisdiction of the inferior court.

Quo Warranto—a writ by which the government commences an action to recover an office or franchise from the person or corporation in possession of it.

Scire Facias (Lat., that you make known)—a writ founded on some public record; a writ at common law to revive a judgment or to obtain satisfaction thereof.

Trespass—to recover damages for injuries sustained by plaintiff as immediate consequence of some wrong done forcibly to his person or property.

Trover—to recover damages against one who has, without right, converted to his own use personal chattels in which the plaintiff has a general or special property.

ASSUMPSIT

As stated, *Assumpsit* is a form of action which lies for the recovery of damages for the non-performance of a parole or simple contract.

Special Assumpsit is an action of assumpsit brought upon an express contract or promise. *General Assumpsit* is an action of assumpsit brought upon the promise or contract implied by law in certain cases.

A promise or undertaking on the part of the defendant, either expressly made by him or implied by the law from his action, constitutes the gist of the action. A sufficient consideration for the promise must be averred and shown although it may be implied by the law, as in the case of negotiable promissory notes and bills, where a consideration is presumed to exist until its absence is shown.

The action of assumpsit lies for money had and received; for money lent; for money found to be due on an account stated; for goods sold and delivered, either in accordance with a previous request or where the defendant receives and uses them; for work performed and materials furnished with the knowledge of the defendant so that he derives a benefit therefrom; for the use and occupation of the plaintiff's premises under a parole contract, express or implied, and in many other cases.

The following form for a declaration in assumpsit may be received from dictation and read from your shorthand notes very frequently:

State of Illinois,)
County of Cook,) ss.

In the Circuit Court of Cook County.

John Doe,)
Plaintiff,)
)
vs.) ASSUMPSIT.
)
Richard Roe,)
Defendant.)

For that whereas, the said plaintiff heretofore entered into certain articles of agreement in writing, made and concluded on the first day of July, 1915, by and between said plaintiff and said defendant, wherein and whereby the said plaintiff agreed with said defendant to furnish the labor and material for the excavation and mason work of a certain four-story apartment house, to be erected on the corner of Rokeby Street and Sheridan Avenue, in the city of Chicago, county and state aforesaid; and under which said agreement the said plaintiff did do the work and labor, and did furnish the material, according to the terms of said contract in all and every respect as therein provided, as by said contract ready to be produced in court will more fully appear; and in which said contract it was provided that all questions of damages, allowance for extra work or work left out, payments upon said contract and all questions as to the true intent and meaning of said contract shall be referred to I. M. Allen as arbitrator, whose decisions should be final and binding, upon both parties; yet, notwithstanding said contract, as aforesaid, the defendant acting under the direction, instruction and advice of said architect, who wrongfully, fraudulently and unjustly acted as the agent and attorney for said defendant, and wholly failed to act as an arbitrator under said contract, and said defendant conspiring with said architect to defraud said plaintiff by deducting large sums of money for delays alleged to have been caused by said plaintiff, and upon other false and pretended charges, deducted large sums of money from the amount due said plaintiff, has neglected and refused, and still

does neglect and refuse, to carry out and fulfill his part of said contract by him to be kept and performed, or any part thereof, or to pay the plaintiff the sums of money still due him thereunder, to the great damage of said plaintiff in the sum of $800; and therefore he brings his suit, etc.

.....
Plaintiff's Attorney.

COVENANT

The action of Covenant may be based upon a deed under seal executed by a person, or in his behalf; or the action may be maintained upon an instrument which is not in fact sealed, but which was intended to operate as a deed. At common law it was not necessary to the maintenance of the action that there should be an actual seal to the instrument sued upon.

The following is a form of declaration in an action of Covenant on a promissory note, as prevails in the State of Virginia:

State of Virginia,)
County of Fairfax,) ss.

In the Circuit Court.

Oscar Krauss, executor of the estate of)
John Doe, deceased,)
Plaintiff,)
)
vs.)
)
Richard Roe,)
Defendant.)

For this, to wit, that heretofore, to wit, on the 3rd day of Mareh, 1894, during the lifetime of said John Doe, at Fairfax, Virginia, the said defendant, by his certain writing obligatory,

sealed with his seal, and now to the court here shown, the date whereof is the day and year aforesaid, acknowledged himself to be held and firmly bound unto the said John Doe for value received, in the sum of Six Thousand Five Hundred ($6,500) Dollars, with interest at Six (6) per cent. from the 3rd day of March, 1894, until paid, to be paid to the said John Doe on demand, which he, the said Richard Roe, covenanted thereby to do.

And the said plaintiff in fact saith that although the said plaintiff, executor as aforesaid, since the death of said John Doe, and the said John Doe, during his lifetime, have always, from the time of making said writing obligatory until hitherto, well and truly performed and fulfilled and kept all things therein contained on the part of said John Doe to be done and kept according to the tenor and effect, true intent and meaning of the said writing obligatory, and of which, the plaintiff, Oscar Krauss, executor as aforesaid since the death of the said John Doe, and the said John Doe during his lifetime often, since the making of the said writing obligatory, demanded of the said defendant the payment of the aforesaid sum of money and interest as aforesaid; yet that the said defendant since the making of the said writing obligatory hath not performed, fulfilled and kept the said covenant and promise in the said writing obligatory contained on his part to be fulfilled and kept according to the tenor and effect, true intent and meaning of the said writing obligatory, especially in this, that the said defendant hath not paid to the plaintiff executor as aforesaid, since the death of the said John Doe, nor to the said John Doe during his lifetime, the said sum of Six Thousand Five Hundred ($6,500) Dollars and interest at Six (6) per cent. thereon from the 3rd day of March, 1894, as aforesaid, nor any part thereof except the sum of One Thousand Five Hundred ($1,500) Dollars, to-wit, on the 3rd day of December, 1894, said payment being applied first on account of interest aforesaid, due on the day of the said payment and then on account of the principal of said sum of money covenanted to be paid as aforesaid; but the same to pay hath hitherto wholly failed and refused, to the plaintiff since the death of said John Doe and to the said John Doe during his lifetime, and still doth fail and refuse con-

trary to the form and effect of the said writing obligatory and of the said covenant of the said defendant so by him made in that behalf as aforesaid.

By reason of all which said premises, the said plaintiff since the death of said John Doe and the said John Doe during his lifetime have not only been deprived of said sum of money, with interest thereon, as aforesaid, and divers other sums of money, amounting in the whole to a large sum, to-wit, the sum of Five Thousand ($5,000) Dollars, but have also been obliged to pay certain costs, expenses and charges, amounting to a large sum of money, to-wit, the sum of Eight Hundred ($800.00) Dollars, in and about endeavoring to collect the said sum of money and interest as aforesaid.

DEBT

Debt is an appropriate remedy only when the sum to be recovered is certain, or when it may be rendered certain by computation. Unliquidated damages cannot be made the subject of an action of debt.

The following is a form of declaration where action is brought on an administrator's bond:

State of Virginia,)
County of Loudoun,) ss.

In the Circuit Court.

James Smith, Anna Smith and Ruth Smith, Plaintiffs,

vs.

Daniel Smith, administrator of the estate of John Smith, deceased, Howard Galt, and Edna Galt, his wife and Michael Morgan, Defendants.

For that whereas, on, to-wit, the 10th day of January, 1910,

one John Smith died intestate in the county of Loudoun, and state of Virginia, leaving a large amount of personal estate in said county. That the said decedent left him surviving his widow, Anna Smith, and the following children, and no other child or children of any child, viz.: James Smith, a son, Ruth Smith, a daughter; and the defendant Daniel Smith, who are his only children and heirs at law. That the said defendant, Daniel Smith, then was and ever since has continued to be a resident of the state of Virginia. That the said defendant, Daniel Smith, on proceedings duly had, was by the Probate Court of said Loudoun county, on, to-wit, the 5th day of November, 1910, duly appointed administrator of the estate of John Smith, deceased, and thereupon duly qualified as such administrator.

That the said defendant, Daniel Smith, then and there entered into bond with the defendants, Howard Galt and Michael Morgan, as the good and sufficient security required by the statute in that behalf, in double the value of the personal estate, to-wit, Twenty Thousand ($20,000) Dollars, according to the statute in such case made and provided, and conditioned as the statute then in force required and as more particularly hereinafter set out.

That the said bond was thereafter signed and sealed by the said administrator and his said securities, attested by the then clerk of the Probate Court of Loudoun county, and filed in his office and which said bond was, on, to-wit, the 8th day of December, 1910, duly approved by the said Probate Court of Loudoun county.

And the defendants then and there, viz., on the 12th day of December, 1910, by their writing obligatory under their respective hands and seals bearing date the said 12th day of December, 1910, jointly and severally acknowledged themselves to be held and firmly bound unto the plaintiffs in the penal sum of Twenty Thousand ($20,000) Dollars current money of the United States, for the payment of which well and truly to be made the defendants bound themselves, their heirs, executors and administrators jointly and severally.

That said writing obligatory was and is subject to a certain condition thereunder written, to the effect that if the said Daniel Smith, administrator of all and singular the goods, chattels, rights and credits of said John Smith, deceased,

should make, or cause to be made, a true and perfect inventory of all and singular the goods, chattels, rights and credits of said deceased, which should come to the hands, possession or control or knowledge of him, the said Daniel Smith, as administrator, or to the hands of any person or persons for him; and the same so made should exhibit, or cause to be exhibited, in the Probate Court of Loudoun county, according to law; and such goods, chattels, rights and credits should well and truly administer, according to law and all the rest of the said goods, chattels, rights and credits, which should be found remaining upon the account of the administrator, the same being at first examined and allowed by the court, should deliver and pay unto such person or persons respectively as might legally be entitled thereto; and should further make a just and true account of all his acts and doings therein, when thereunto required by the said court; and if it should appear that any last will and testament was made by the said deceased, and the same should be approved in court and letters testamentary or of administration obtained thereon, the said Daniel Smith, on being required thereto, should render and deliver up the letters of administration granted aforesaid, and should in general do and perform all other acts which might at any time be required of him by law; that then the said obligation was to be void; otherwise to remain in full force and effect and virtue, as by the said writing obligatory and the said condition thereof, remaining upon the files of said court, will more fully appear.

That thereupon the said Daniel Smith then and there took upon himself the administration of said estate and from thence hitherto has been and still is such administrator.

But the plaintiffs aver that the said defendant, Daniel Smith, has not faithfully performed the acts required of him, or his duties as such administrator, according to the terms of the said conditions of the said writing obligatory, but has wholly failed and refused so to do, to the injury of said Anna Smith, James Smith, and Ruth Smith.

And plaintiffs allege as a breach of the said condition of the said writing obligatory, that heretofore, to-wit, on the said 12th day of December, 1910, there came to the hands of said Daniel Smith, as such administrator, a large sum of money, to-wit, the sum of Three Thousand ($3,000) Dollars, which it

became and was the duty of said defendant, Daniel Smith, as such administrator, to hold and keep and well and truly administer according to law and deliver and pay unto such persons respectively as might be legally entitled thereto; but the plaintiffs allege that the defendant, Daniel Smith, administrator, wholly unmindful of his duty as aforesaid, wholly failed so to do, but delivered and paid the whole of said fund to persons not legally entitled thereto, to-wit, to the defendant, Howard Galt, without any order of the court therefor.

Plaintiffs allege that afterwards, on, to-wit, the 15th day of February, 1911, the said defendant, Daniel Smith, as such administrator, filed in the Probate Court of Loudoun county his certain report and account in and by which the said administrator showed to the Probate Court of said Loudoun county that he had loaned of the funds in his hands as such administrator, the sum of Three Thousand ($3,000) Dollars to the said Howard Galt and Edna Galt, his wife, which said sum has been lost, by reason of the fact that the said Howard Galt and Edna Galt have become insolvent and the securities given to secure the same have become valueless.

That thereupon the said Probate Court of said Loudoun county entered an order, disapproving said report and account and disallowing the said claim of said administrator for credit in his said account for the amount of his said loan, and directing the said administrator to make and present to the court a new report and account, from which said claimed credit be omitted.

That afterwards, to-wit, the 24th day of April, 1911, the said defendant, Daniel Smith, as such administrator, under the direction of the said Probate Court of Loudoun county, made and filed in the office of the clerk of said Probate Court and presented to said Probate Court, a new account and report, in and by which it appeared that there was in the hands of such administrator, of the assets of said estate, certain sums due from such administrator to the various persons for whose use this suit was brought as aforesaid; that is to say, there was due Anna Smith, widow of said decedent, as her distributive share of the assets of said estate, after charging her and allowing the administrator credit for all sums paid to her or for her use by said administrator, the sum of Eight Thousand Five Hundred ($8,500) Dollars as the un-

paid balance of her distributive share of the estate of said decedent; that there was due to Ruth Smith, after giving to said administrator credit for, and charging her with all sums paid to her or for her account by said administrator, the sum of Three Thousand Five Hundred ($3,500) Dollars as the unpaid balance of her distributive share in the estate of said decedent; that there was due to James Smith, after giving to said administrator credit for, and after charging him with all sums paid to him or for his account by said administrator, the sum of One Thousand Nine Hundred ($1,900) Dollars as the unpaid balance of his distributive share in the estate of said decedent.

That there was also due and unpaid to Thomas Grant, the attorney of the said estate, Seven Hundred and Fifty ($750.00) Dollars, and unpaid court costs amounting to the sum of Eighty-Six ($86.00) Dollars.

That thereafter, to-wit, on the 2nd day of June, 1911, upon proceedings duly had, in the said Probate Court of Loudoun county, before the judge thereof, it was by the said court finally adjudged that the aforesaid amounts respectively were held by the said defendant, Daniel Smith, as such administrator for the use of the parties aforesaid; and it was by the consideration and judgment of said court ordered and decreed that such administrator do pay within five days from the making of said order to the parties severally entitled to the said sums of money; that is to say, that he should pay the said costs and attorneys' fees:

That he should pay to Anna Smith, $8,500.00.

That he should pay to Ruth Smith, $3,500.00.

That he should pay to James Smith, $1,900.00.

The plaintiffs allege that although more than five days have elapsed since the making of said order, and although after the expiration of said period of five days each of the persons for whose use this suit is brought demanded of the said Daniel Smith that he pay to them the amounts due to them respectively, as per the terms of said last named order and decree of said Probate Court of Loudoun county; yet the said defendant, Daniel Smith, administrator, as aforesaid, has wholly failed and refused, and still does refuse to pay to the persons so entitled as aforesaid, the whole or any part so found due as aforesaid.

And the plaintiffs assign as a further breach of the condition of said writing obligatory, that, on, to-wit, the 2nd day of June, 1911, there was in the hands of the said administrator, after the payment of all debts, expenses of administration and all other lawful charges against the said estate of John Smith, deceased, the following named sums in the hands of such administrator, as their respective distributive shares of the estate of said decedent in his hands; that is to say, that there was in his hands as such administrator the sum of Eight Thousand Five Hundred ($8,500) Dollars as the unpaid balance of the distributive share of said Anna Smith, widow of said decedent, also the sum of Three Thousand Five Hundred ($3,500) Dollars, as the unpaid balance of the distributive share of Ruth Smith, daughter of said decedent, also the sum of One Thousand Nine Hundred ($1,900) Dollars, as the unpaid balance of the distributive share of James Smith, son of said decedent.

That in addition to said sums so as aforesaid held by him for the said distributees as aforesaid, the sum of Seven Hundred and Fifty ($750.00) Dollars, the unpaid attorney's fees of Thomas Grant, the attorney of said estate, in the management of said estate, and the sum of Eighty-Six ($86.00) Dollars, unpaid costs of administration.

That thereupon, on, to-wit, the 24th day of April, 1911, the said defendant, Daniel Smith, as such administrator, filed in the Probate Court of Loudoun county his final account and report showing the facts.

That thereupon, by the consideration and judgment of the said Probate Court of Loudoun county, it was by said court ordered, adjudged and decreed that the final account and report of said administrator be approved, and that the said administrator pay said unpaid costs of Eighty-Six ($86.00) Dollars, and the said attorney's fees of Seven Hundred and Fifty ($750.00) Dollars, and to Anna Smith the sum of Eight Thousand Five Hundred ($8,500) Dollars, and to Ruth Smith the sum of Three Thousand Five Hundred ($3,500) dollars, and to James Smith the sum of One Thousand Nine Hundred ($1,900) Dollars.

But the said Daniel Smith, administrator as aforesaid, wholly unmindful of his duty in the premises, has not paid the said sums of money or any part thereof, but has wasted

the said moneys and effects, and wholly fails and refuses to pay any part thereof to the parties so as aforesaid entitled thereto. By means of which premises, an action has accrued to the plaintiffs for the use aforesaid, in the sums above set forth.

Yet, the defendants, though requested thereto, have not paid to the plaintiff, or to any of the persons for whose use this suit is brought, the said sum of money or any part thereof, but refuse so to do, to the damage of the plaintiffs for the use aforesaid, in the sums above set forth.

And therefore for the use aforesaid this suit is brought.

.....

Plaintiffs' Attorney.

DETINUE

The action of detinue is maintainable for the wrongful detainer of specific goods or chattels against a person who has the actual possession of the property and who acquired it by lawful means, as by bailment, delivery or finding. The gist of the action is the wrongful detainer. The following is a form of declaration in Detinue, as would be used in the State of Virginia:

State of Virginia,)
County of Loudoun,) ss.

In the Circuit Court.

Smith Cash Register Company, a corporation,)
Plaintiff,)
)
vs.)
)
Patten Manufacturing Company, a corporation, A. C. True, and John R. Marshall,)
Defendants.)

The Smith Cash Register Company, a corporation, plain-

tiff, complains of the Patten Manufacturing Company, a corporation, A. C. True and John R. Marshall, trustees of the Patten Manufacturing Company, a corporation duly organized and existing under and by virtue of the laws of the state of Virginia, defendants, who have been summoned to answer a plea that they render to the plaintiff two (2) certain cash registers, numbers 11345 and 11346, the property of it the said plaintiff of great value, to-wit, of the value of Eight Hundred ($800.00) Dollars, which from the said plaintiff, the said defendants unjustly detain. And thereupon the said plaintiff saith that heretofore, to-wit, on the 26th day of August, 1915, at the city aforesaid, it, the said plaintiff, delivered to the defendants the said cash registers numbers 11345 and 11346, the property of the said plaintiff of great value, to-wit, of the value of Eight Hundred ($800.00) Dollars, to be re-delivered to the said plaintiff by the said defendants when they the said defendants should be thereunto afterwards requested. Nevertheless, the said defendants although they were afterwards, to-wit, on the 5th day of June, 1916, in the city aforesaid requested by the said plaintiff so to do, hath not as yet delivered the said cash registers numbers 11345 and 11346 to the said plaintiff, but hath hitherto wholly neglected and refused, and still doth neglect and refuse so to do, and still unjustly detain the same from the said plaintiff, viz., at the city aforesaid, to the damage of the said plaintiff of Eight Hundred ($800.00) Dollars. And therefore it brings its suit.

.....

Plaintiff's Attorney.

CASE

Case, and not trespass, is maintainable for an injury produced by a cause that is known to the wrongdoer to be of a dangerous character.

An action for Libel is an action in Trespass on the Case and is maintainable for a wrongful and malicious publication of words which tend to bring a party into public hatred, contempt, or ridicule.

The following is a form of declaration in an action for Libel:

State of Illinois,)
County of Cook,) ss.

In the Circuit Court of Cook County.

John Doe,)
Plaintiff,)
)
vs.)
)
The Chicago Times, a corporation,)
Defendant.)

For that whereas, before and at the time of the committing by the defendant of the several grievances hereinafter mentioned, said plaintiff was a person of good name, credit and reputation in the county of Cook, and state of Illinois, and before and at the time of the committing by the defendant of the several grievances hereinafter mentioned, carried on, and still does carry on, the trade and business of a dry goods merchant in the city of Chicago, in said county of Cook, and was deservedly held in esteem by his neighbors and those with whom he had dealings in his trade and business as such dry goods merchant, whereby he acquired great gains in his trade and business; and whereas, before and at the time of the committing by the defendant of the several grievances hereinafter mentioned, the plaintiff was held in high esteem by his neighbors and acquaintances, as a patriotic, law-abiding and law-respecting citizen of said county, and as to his political views, tenets and opinions he was, and for a long time prior thereto had been, a member and adherent of the democratic party, and had obtained and received the nomination as a candidate for the office of treasurer of said Cook county by the regular and general nominating convention of said democratic party of the said county of Cook, held in Chicago, in said Cook county, on the 15th day of June, 1914, and thereby became and was a candidate for said office of treasurer on the regular ticket of said democratic party at the general election held in said county on the 5th day of November, 1914.

And the said plaintiff, for a further statement of extrinsic facts bearing upon the grievances hereinafter mentioned and complained of, further avers that on and prior to the 4th day of May, 1886, there was in said county of Cook, and elsewhere throughout the United States, and ever since that time has been and still is, a large number, class, sect or party of persons commonly called, known and designated as "anarchists"; that on said 4th day of May, 1886, a great riot occurred in the city of Chicago, in said county of Cook, now commonly known as the "Haymarket Riot," in which riot one Matthias J. Degan, a policeman of said city of Chicago, was, as was then and ever since that time has been and still is commonly understood and believed, killed by a dynamite bomb thrown by some person into the midst of a company of policemen of the said city of Chicago, then and there being the explosion of said bomb; that it was then and ever since that time, has been and still is, commonly believed in said city of Chicago, and in said county of Cook, and elsewhere, that said riot and murder were immediately and remotely instigated, caused and brought about by said class and party of persons then and ever since then and now generally known and designated in said city and county as "anarchists," and by certain leaders and prominent and representative men in said class or party of persons called "anarchists," as aforesaid; and it was then, and ever since that time has been and is now, commonly understood and believed in the city and county aforesaid, that said riot and murder were the natural result of the doctrines and teachings of said class, party or sect called "anarchists," as aforesaid, and that the doctrines, opinions, beliefs, teachings, and tenets of said class, party or sect called anarchists, as aforesaid, and of the persons composing said class, party or sect, is, that the law and order of society then, and ever since then and now, existing, should be overthrown by revolution and force.

And the plaintiff further avers that after said riot and murder eight of the prominent leaders of said class, party or sect called anarchists, to wit, August Spies, Michael Schwab, Samuel Fielden, Albert R. Parsons, Adolf Fischer, George Engel, Louis Lingg and Oscar W. Neebe, were indicted by the grand jury of said Cook county for murder, to-wit, the murder aforesaid, and thereupon such proceedings were after-

wards had in the Criminal Court of said county that all of said persons above named were adjudged guilty of murder, and in pursuance of the judgment of said Criminal Court the said August Spies, Michael Schwab, Samuel Fielden, Albert R. Parsons, Adolf Fischer, George Engel and Louis Lingg were given the death penalty, and in pursuance of said judgment the said Oscar W. Neebe was committed to the penitentiary of the state of Illinois.

And the plaintiff further avers that said riot has been, ever since its occurrence, commonly known in said city and county as the riot of the anarchists; and that said trial of said eight persons was at the time thereof, and ever since that time has been and still is, commonly known in said city and county as the trial of the anarchists; and the hanging of said persons above named was then, and ever since that time has been and now is, in like manner commonly known and spoken of as the hanging of the anarchists.

And the plaintiff further avers, that the name, term and designation of "anarchists" ever since said riot, trial and hanging, has been and still is commonly understood and regarded in said city and county, and elsewhere, as descriptive of one who holds and entertains opinions and doctrines opposed to the maintenance of law and order and subversive of government, and similar in that regard to the opinions and doctrines entertained and acted upon, as aforesaid.

And the plaintiff further avers, that ever since said riot, trial and hanging, the name and designation of "anarchist" applied to any person, has tended, and still tends, to expose such person to public hatred, contempt and financial injury; yet the defendant, well knowing the premises, but contriving and wrongfully and maliciously intending to injure and destroy the good name and reputation of the plaintiff as a law-abiding and order-loving citizen of the community in which he lives, to-wit, in the city and county aforesaid, and to injure him in his said business, and to bring him into public hatred, contempt, ridicule and financial injury, on the day of August 26, 1914, in the county aforesaid, wickedly and maliciously did compose and publish, and did cause to be composed and published, of and concerning the plaintiff, and of and concerning the plaintiff as a candidate for said office of treasurer, in a certain newspaper called "The Chicago Times," whereof the

said defendant was then and there the proprietor, a certain false, scandalous, malicious and defamatory libel, containing, among other things the false, scandalous, malicious, defamatory and libelous matter following, of and concerning the plaintiff, that is to say: "He (meaning the plaintiff) is an anarchist, hot-headed and fiery. It was said yesterday that a committee of seven had gone to see him (meaning the plaintiff), and was received by him (meaning the plaintiff), in a room with pictures of August Spies and Michael Schwab, and the other anarchists (meaning the other anarchists above mentioned). This did not satisfy the committee and they were imprudent enough to complain about him" (meaning the plaintiff), meaning and intending thereby to charge the plaintiff with being a member of said class, party or sect of persons called "anarchists," and that the plaintiff entertained and held to the aforesaid doctrines, views and tenets, of said class, party or sect of persons called anarchists, and that the plaintiff held to the teachings of said executed anarchists with regard to law and government, and that the plaintiff was in accord with the doctrines and cherished the memory of said executed revolutionists and murderers, and that said plaintiff was a person who entertained opinions and doctrines opposed to the maintenance of law and order and subversive of government, and in favor of the overthrow of society as then existing, by revolution and force.

2. And also for that whereas, afterwards, to-wit, on the 30th day of August, 1914, in the county aforesaid, the said defendant, well knowing the premises aforesaid, and further contriving and wrongfully and maliciously intending to injure and destroy the good name and reputation of the plaintiff as a law-abiding citizen in the community in which he resided, to-wit, in the city of Chicago, and county of Cook aforesaid, did compose and publish, and did cause to be composed and published, of and concerning the plaintiff, and of and concerning the result of said election, and of and concerning the plaintiff as candidate at said election, in said newspaper called "The Chicago Times," whereof the said defendant was there and then the proprietor, a certain other false, scandalous, malicious and defamatory libel, containing, among other things the false, scandalous, malicious, defamatory and libelous matter following, of and concerning the plaintiff, as afore-

said, that is to say: But he (meaning the plaintiff), was voted against because he is an anarchist. This is disclosed by the returns from the first, sixth, tenth, twelfth, twenty-first and thirty-first wards. Here are seven democratic wards. Their vote indicates somewhat the temper of the party (meaning the democratic party) towards him (meaning the plaintiff). These figures show that his opponent ran nearly ten thousand votes ahead of him (meaning the plaintiff), in these wards." Meaning and intending to charge that said plaintiff was then, to-wit, at the time of and before said election, a member and adherent of said party, sect or class of persons then commonly known and designated as "anarchists," as aforesaid, and that he, the said plaintiff, was defeated at said election, and ran behind the other candidates on said ticket at said election, because he, the said plaintiff, was an anarchist; and meaning and intending to charge that the plaintiff was a person who entertained opinions and doctrines opposed to the maintenance of law and order and subversive of government, and in favor of the overthrow of society as then existing, by revolution and force.

By means of the committing of said several grievances by the defendant, the plaintiff has been and is greatly injured in his good name, credit and reputation, and has been brought into public scandal and disgrace; and also by means of the premises the plaintiff has been and is otherwise injured, to the damage of the plaintiff of Fifty Thousand ($50,000) Dollars, and therefore he brings suit, etc.

.....

Plaintiff's Attorney.

CERTIORARI

Certiorari is a common law or statutory remedy to review proceedings of inferior courts which are not reviewable on appeal, error, or other modes of review. A writ of certiorari is of common law origin and is in force in Illinois as part of its adopted law. At common law it is maintainable only when the inferior court or jurisdiction has exceeded its power

or has proceeded illegally, and no appeal is given or writ of error will lie.

The following is a form for the state of Illinois of a writ of certiorari:

State of Illinois.

In the Supreme Court.

Mary Jenkins, Petitioner,

vs.

Thomas Saunders, Respondent.

To the honorable, the judges of the Supreme Court of the state of Illinois:

Now comes Mary Jenkins, petitioner, in the above entitled cause, by James Gregory, her attorney, and represents unto the court that upon hearings of a cause in the Circuit Court of Cook County, Illinois, at the October term, 1914, of said court, wherein this petitioner was the petitioner and Thomas Saunders was respondent, a judgment and order was entered in favor of this petitioner removing said Thomas Saunders as administrator of the estate of William Jenkins, deceased, and directing that the property be turned over to your petitioner.

Your petitioner further represents that said Thomas Saunders prayed for and perfected an appeal from said order and judgment of the Circuit Court to the Appellate Court for the first district of the state of Illinois, and said appeal was submitted to said court at the May term, 1915, of said court. That afterwards, at the July term, 1915, of said Appellate Court, to-wit, on the 14th day of July, 1915, the said Appellate Court filed an opinion and rendered a judgment in said cause reversing the judgment and order of the Circuit Court.

Your petitioner therefore presents her petition that a writ of certiorari be granted to the Appellate Court of the first district of the state of Illinois in said cause directing that said Appellate Court shall certify to the Supreme Court said cause for review and determination.

And for reasons therefor your petitioner would represent that said cause involves a question of such importance in relation to the administration of estates and the power and authority of the public administrator to act and the rights and powers of the heirs of a decedent who reside within the state, where there are no creditors, to adjust among themselves without the expenses attending an administration the rights of the several heirs in and to the property of the deceased, that in the decision of said cause it is necessary to place a construction upon sections eighteen and forty-six of the Administration act of the state of Illinois; and as said two sections had not been construed by the Supreme Court as relating to each other a writ of certiorari should be granted in this cause and the same certified to the Supreme Court that said court may make such construction.

Your petitioner therefore prays that pursuant to the second paragraph of section 121 of "An Act in relation to practise and procedure in courts of record," as amended by an act approved June 4, 1909, in force July 1, 1909, a writ of certiorari may be granted in this cause.

Respectfully submitted,

.....

Attorney for Petitioner.

EJECTMENT

Ejectment is a form of action which lies to regain the possession of real property, with damages for the unlawful detention thereof. By this form of action possessory titles to corporeal hereditaments may be tried and possession obtained. Corporeal hereditaments are substantially permanent objects which may be inherited. The term "land" will include all such.

On the next following page is given a form of declaration in ejectment which would be used in the District of Columbia:

In the Supreme Court of the District of Columbia.

John Doe,)
Plaintiff,)
)
vs.)
)
Richard Roe,)
Defendant.)

The plaintiff, John Doe, sues the defendant, Richard Roe, to recover possession of the piece and parcel of land in the city of Washington, District of Columbia, described as follows, to-wit: Part of Original Lot One (1), in Square numbered Four Hundred and Eighty-seven (487), contained within the following metes and bounds:

Beginning on Fifth Street forty-six (46) feet north from the southeast corner of said Square, and running thence north twenty-nine (29) feet to the northeast corner of said Lot One (1); thence west sixty-two (62) feet three (3) inches; thence south twenty-nine (29) feet, and thence east sixty-two (62) feet, three (3) inches to the place of beginning, together with the improvements, rights, privileges, and appurtenances to the same belonging, in which said described premises the plaintiff claims the fee simple title, and of which he was lawfully possessed, to-wit, on the first day of November, 1916, when the defendant entered upon the same and unlawfully ejected the plaintiff therefrom.

And the plaintiff claims the possession of said piece or parcel of ground, with the improvements thereon and the appurtenances thereof, and the costs of this suit.

And the plaintiff further sues the defendant for money payable by the defendant to the plaintiff for that the defendant having as aforesaid ejected the plaintiff from the aforesaid premises, has, from the day and date aforesaid taken and received and still continues to take and receive, the rents, issues, and profits thereof, and to use, occupy, and enjoy the said premises, to the damage of the plaintiff, John Doe, in the sum of four hundred dollars, which amount the plaintiff claims besides costs of this suit.

GARNISHMENT

The proceeding of garnishment is purely statutory and is a proceeding at law. It is a process of attaching money or goods due a defendant in the hands of a third party. The person in whose hands such effects are attached is the garnishee, because he is *garnisheed,* or warned not to deliver them to the defendant, but to answer the plaintiff's suit. In most of the states the garnishee responds to the proceedings against him by a sworn answer to interrogatories propounded to him, which in some states is held to be conclusive as to his liability, but generally may be controverted and disproved, although in the absence of contradictory evidence it is always taken to be true.

The action is begun by affidavit, which, in the state of Illinois, may be in the following form:

AFFIDAVIT

State of Illinois,)
County of Cook,) ss.

In the Circuit Court of Cook County.

James Block,)
Plaintiff,)
)
vs.)
)
Hugh W. Wilson,)
Defendant.)
First National Bank,)
Garnishee.)

James Block, being first duly sworn, deposes and says that on July 14, 1911, or thereabouts, this affiant recovered a judgment against said Hugh W. Wilson for the sum of Four Hun-

dred Dollars and costs of said suit; that shortly thereafter a writ of execution issued out of the office of the clerk of said Circuit Court of Cook county, upon said judgment against said Hugh W. Wilson and was delivered to the sheriff of Cook county on July 16, 1911; that the sheriff of said Cook county made a demand upon said writ of execution that the said Hugh W. Wilson turn out property real or personal for the satisfaction of said judgment; that said Hugh W. Wilson refused to turn out property in compliance to said demand; and that said sheriff of Cook County has on the 20th day of July, 1911, made a return upon said writ of "No property found."

Affiant further saith that said defendant Hugh W. Wilson has no property within the knowledge of this affiant, in his possession, liable to execution; and that this affiant has just reason to believe that the First National Bank, a corporation, is indebted to the said Hugh W. Wilson or has in its possession, custody, or charge, effects or estate of said defendant Hugh W. Wilson.

And further affiant saith not.

.....

Subscribed, etc.

Interrogatories to the garnishee summoned in this case:

1. Had you or either of you in your possession, charge, or control, at the date of the service of the writ in this cause, any moneys, rights, credits or effects owned by or due to Hugh W. Wilson? If so, state what rights, amounts thereof, by whom due and when payable?

2. Were you indebted to said Hugh W. Wilson at the date of the service of said writ of garnishment? If so, how much, for what due and when payable?

3. State what effects or debts of the said Hugh W. Wilson there were at the date of the said writ of garnishment, in the hands of any other person or persons besides yourselves, to the best of your knowledge and belief.

4. Had you, in your possession, charge or custody at the date of the service of said writ, any lands, tenements, goods or chattels of said Hugh W. Wilson? If so, state the description of each piece or parcel of land and its value.

5. Had you, at the date of service of said writ, any rights,

credits or effects of said Hugh W. Wilson (not hereinbefore specified) in your possession, charge or custody, from you or either of you due and owing at the service of said writ, or any time since, or which may hereafter become due? If so, state the value, amount, when due and how payable.

6. Had you, or either of you, any property, goods, chattels, rights, credits, or effects of any kind belonging to the said Hugh W. Wilson, or in which he is interested? If so, describe the same fully and particularly, giving the items and amounts.

7. What contract, if any, has been entered into by you or either of you, jointly or severally, with the said Hugh W. Wilson for the sale or purchase of real estate?

8. If in the answer to interrogatory seven you state that there is a contract as above stated, then set forth the contract and what amounts, if any, have been paid by you upon said contract.

HABEAS CORPUS

Habeas Corpus is a writ directed to a person detaining another and commanding him to produce the body of the prisoner at a certain time and place, with the day and cause of his detention, to do, submit to, and to receive whatsoever the court or judge awarding the writ shall consider in that behalf.

This is the most famous writ in the law; and, as for many centuries it has been employed to remove illegal restraint upon personal liberty, no matter by what power imposed, it is often called the great writ of liberty.

The following is the form for a writ of Habeas Corpus in Illinois for the purpose of securing custody of a child:

To the Honorable, the Judges of the Circuit Court of the county of Cook, state of Illinois:

The petition of Fannie Pierce, by Susan Pierce, her next

friend, respectfully shows unto your honors that Fannie Pierce, a girl of fourteen years of age, is wrongfully restrained of her liberty and possession of her body held by Wallace Davis and Martha Davis, his wife, of the city of Chicago, county of Cook, and is not detained by virtue of any process, judgment, decree or execution specified in the twenty-first section of the Act on *habeas corpus,* which is chapter 65 of the statutes of the state of Illinois. And your petitioner further avers that said Fannie Pierce is the only child of Charles Pierce, late of the city of Chicago, Cook county, Illinois, who departed this life upon the 12th day of May, 1912, at Chicago, Illinois, testate, and in and by his last will and testament devised property to the value of not less than one thousand ($1,000) dollars to his said daughter, Fannie Pierce, but did not in and by his last will and testament appoint a guardian of the person of his said daughter, or commit the care and custody of his said daughter to anyone whomsoever, as appears by the last will and testament of said Charles Pierce, a copy of which is attached hereto and made a part hereof as exhibit "A." That the said Fannie Pierce is a child fourteen years of age and that the mother of Fannie Pierce departed this life at the birth of said Fannie Pierce, fourteen years ago; that the said Fannie Pierce has been in the care and custody of said Wallace Davis and Martha Davis, for whose care and custody the said Charles Pierce paid the said Wallace Davis and Martha Davis during his lifetime the sum of twelve ($12) dollars a month, as your petitioner is informed and believes; that the said Charles Pierce died leaving neither father nor mother, but three sisters, as follows: Anna Pierce, Susan Pierce and Mary Pierce, the aunts respectively of said Fannie Pierce, who are her next of kin and are entitled to the care and custody of the person of said Fannie Pierce. That said Wallace Davis and Martha Davis are not related by consanguinity or affinity with the said Fannie Pierce and that they are not able to afford the said Fannie Pierce the necessary means for support and education in the station of life in which her father, said Charles Pierce, was born and educated, and that the estate left to said Fannie Pierce by her said father is insufficient, if invested to the best possible advantage, to support and educate her in her station of life, and that Anna Pierce, the aunt of said Fannie Pierce,

and her two sisters, are desirous of establishing a home where they reside in Chicago, Illinois, being each of them devisees under their father's will of an income approximately of two thousand ($2,000) dollars a year for each of said sisters, and each of said sisters has independently of said will three thousand ($3,000) dollars a year which will enable them to care for and support the said Fannie Pierce according to her station in life.

Further, your petitioner shows that the said Wallace Davis has two children of his own and that the estate left by Charles Pierce to his said daughter, Fannie Pierce, is totally insufficient to educate and clothe her as she could be educated and clothed by her aunt, Anna Pierce, in case the custody of your petitioner be awarded to her said aunt.

Further, your petitioner alleges that under the last will and testament of said Charles Pierce, Willis Proctor and Charles Barnes, all of Chicago, Illinois, are named as trustees of the estate of said Charles Pierce, and have also been appointed executors of said estate and have accepted said trust, and that the said trustees have without authority committed the care and custody of the person of the said Fannie Pierce for the time being to said Wallace Davis and Martha Davis.

Further, your petitioner says that her aunt, Anna Pierce, is desirous of educating and caring for, to the best of her means and ability, her said niece, your petitioner, Fannie Pierce, and that said Anna Pierce resides at Chicago, Illinois, and that it will be for the best interests of your petitioner, the said Fannie Pierce, that she be committed to the care and custody of said Anna Pierce.

Wherefore, your petitioner prays a writ of *habeas corpus* to Wallace Davis and Martha Davis to produce the body of Fannie Pierce before Judge Kavanagh at the court house, in Chicago, Illinois, on Saturday, November 4, 1916, at ten o'clock A. M., to the end that said Fannie Pierce may be discharged from the custody of Wallace Davis and Martha Davis and be delivered to your petitioner's aunt, Anna Pierce.

.....

By .....
Her next friend.

MANDAMUS

The writ of mandamus usually issues out of the highest court of general adjudication in a state, in the name of the sovereignty, and is directed to any person, corporation, or inferior court of judicature within its jurisdiction, requiring them to do some particular thing therein specified, and which appertains to their office or duty. It is an extraordinary remedy in cases where the ordinary modes of procedure are powerless to afford remedies to the parties aggrieved, and when, without its aid, it would be a failure of justice.

Mandamus is a common law action and is governed by the same rules as are actions at law. This action is begun by a petition, the party bringing the action being generally designated as the relator.

A form for a petition for a writ of mandamus, such as prevails in the State of Illinois, follows:

State of Illinois,)
County of Cook,) ss.

In the Circuit Court of the county of Cook.

In the name and by the authority of the)
people of the State of Illinois, ex-relatione)
Martha Jackson,)
)
vs.)
)
Julius Walberg and Edward Steele,)
Trustees.)

To the honorable, the judges of said Circuit Court.

Your petitioner, the people of the state of Illinois, on the

relation of Martha Jackson, respectively shows unto your honors:

1. That the said relator is a resident of the city of Chicago, in the county and state aforesaid; that she is the widow of Peter Jackson, deceased; that on or about the first day of September, 1901, the said Peter Jackson became a member of the police department of the city of Chicago, and so remained a member from said date to the 4th day of June, 1914, on which day he died.

2. That the said Peter Jackson while a member of the said police department held the position or office of inspector of the said police department of said city, and likewise acted as inspector of the men composing the department of said city; that while engaged in the actual discharge of the duties of said office or position, on the 4th day of June, 1914, he was stricken down and became physically ill because of the physical efforts exerted by him, and which were necessary to be exerted by him in carrying out and performing his aforesaid duties; and that as a result of said physical ailments and disability, so caused as aforesaid, the said Peter Jackson died, as hereinbefore set forth.

3. That at the time the said Peter Jackson became a member of said police department there had been established in said city of Chicago a police and firemen's relief fund, in accordance with an Act of the General Assembly of the state of Illinois, entitled, "An Act to amend an Act for the relief of disabled members of the police and fire departments in cities and villages," approved May 24, 1877, in force July 1, 1877, approved May 10, 1879, in force July 1, 1879, and which police and firemen's relief fund continued to be established and maintained in accordance with the provisions of said Act until amended by the Act of 1887, as hereinbefore set forth; and that the said Peter Jackson became a member of said police and firemen's relief fund at the time he joined said police department, and continued to be a member thereof in good standing until the date of his death.

4. That after the death of said Peter Jackson, and as his widow, Martha Jackson, the relator, made application to the trustees of said police and firemen's relief fund for the payment to her as such widow, so long as she should remain

unmarried, a sum of money not exceeding Seven Hundred and Twenty ($720.00) Dollars per annum, in accordance with the provisions of said Act, and submitted to said trustees proof of the death of said Peter Jackson, and that his death was the immediate effect of an injury received by him while in the discharge of his duties as such officer and member of said police department; that such proceedings were thereupon had by such trustees that they found said application to be in all respects regular and in accordance with law, and that said Peter Jackson's death was the immediate effect of an injury received by him while in the actual discharge of his duties as such officer and member of the police department, and awarded to the relator an annual pension of Seven Hundred and Twenty ($720.00) Dollars per annum, so long as she should remain unmarried.

5. The said trustees thereupon proceeded to make payment to said relator, commencing on or about the first day of July, 1914, of the sum of Seven Hundred and Twenty ($720.00) Dollars, and continued to make payment of said sum until the formation of the Board of Police Pension Fund Commissioners, under and by virtue of the provisions of an Act of the General Assembly of the state of Illinois, entitled, "An Act to provide for the setting apart, formation, and disbursement of the police pension fund in cities, villages, and in incorporated towns," approved April 29, 1887, and in force July 1, 1887.

6. That in accordance with the provisions of said last mentioned Act, on the 1st day of January, 1916, the said city of Chicago, having a population of more than one million five hundred thousand inhabitants, immediately arranged for the formation and disbursement of the police pension fund in accordance with the provisions of said last mentioned Act; that there was then and there established a Board of Police Pension Fund Commissioners in accordance with the provisions of said Act, who then and there proceeded to comply with and carry out the provisions of said Act; and that in accordance with the provisions of Section 12 of said Act, the said relator, Martha Jackson, then and there became and was entitled to receive the benefits provided for in said Act.

7. That at the time of the death of said Peter Jackson, the salary attached to the rank which he held in said police de-

partment was Fourteen Hundred and Forty ($1,440.00) Dollars per annum; that in the month of January, 1916, in accordance with the provisions of Section 6 of said last mentioned Act, the said Board of Police Pension Fund Commissioners ordered and directed that a yearly pension of Seven Hundred and Twenty ($720.00) Dollars should be paid to the relator, as such widow; that from that time until on or about the 1st day of July, 1916, said relator was duly and regularly paid said yearly pension of Seven Hundred and Twenty ($720.00) Dollars per annum, in monthly installments of Sixty ($60.00) Dollars each.

8. That on the first day of July, 1916, there went into effect an Act of the General Assembly of the state of Illinois, entitled, "An Act to amend Sections 1, 2, 3, 4, 6, 9, 10, and 11 of an Act entitled, 'An Act to provide for the setting apart, formation, and disbursement of the police pension fund in cities, villages, and in incorporated towns,'" approved April 29, 1887, in force July 1, 1887, as amended by an Act approved April 24, 1899, in force July 1, 1899, as amended by an Act approved May 11, 1901, in force July 1, 1901; and that in accordance with the provisions of said Act there was therefore appointed by the Mayor of the city of Chicago three (3) persons as constituting the Board of Trustees of the Police Pension Fund of the City of Chicago, such persons being Julius Walberg and Edward Steele, the other member of said board provided for by said Act having not yet been appointed.

9. That said Julius Walberg and Edward Steele duly qualified as such members of the Board of Trustees of the Police Pension Fund, and are now acting as such Board of Trustees; that on or about the first day of September, 1916, said Board of Trustees passed a resolution by which they refused to any longer pay to said Martha Jackson the pension which had been awarded to her as hereinbefore set forth; and ever since said day have refused and still do refuse to pay to said relator said pension or any part thereof, although under the provisions of said Act of 1901, said relator is entitled to be paid a yearly pension of Seven Hundred and Twenty ($720.00) Dollars.

10. That on or about the 3rd day of September, 1916, this relator received from the clerk of said Board of Trustees a

letter questioning the cause of the death of said Peter Jackson, and stating that said pension had been stopped by said Board of Trustees, as before set forth; that said relator thereupon protested to said board that they had no right or authority to call upon said relator for additional proofs of the cause of death of said Peter Jackson; that they had no right or authority to strike her name from the roll of beneficiaries of said pension fund, and to refuse to pay her the pension to which she was entitled under the provisions of said Act of 1901; and that on the 8th day of September, 1916, she delivered to said Board of Trustees a protest in writing to the above effect; that said Board of Trustees thereupon refused to rescind its previous action in the premises, and refused to consider said relator as entitled to any of the benefits of said fund or to order the payment to her of any sum whatsoever as a beneficiary of said fund; and said board still does refuse so to do.

11. That under and by virtue of the provisions of Section 12 of the Act of 1887, which section is still in full force and effect, unchanged and unmodified by the Act of 1901, the said Board of Trustees is in duty bound to recognize the rights of the relator herein as coming within the special class of persons receiving benefits under the Act of 1879, and therefore entitled to the benefits of the Act of 1901; that said Board of Trustees has no power, right, or authority to pass upon the validity of the pension of the relator; and that the relator has no remedy in the premises except by the aid and order of this honorable court.

Your petitioner, therefore, presents this petition, and prays that a writ of mandamus do forthwith issue from said court to the said Julius Walberg and Edward Steele, members of said Board of Trustees of the Pension Fund of the city of Chicago; that said board be commanded forthwith to enroll the name of Martha Jackson as one of the beneficiaries of the pension fund of the City of Chicago, as the widow of Peter Jackson, deceased, to order the payment to her from the first day of July, 1916, of an annual pension of Seven Hundred and Twenty ($720.00) Dollars per annum, so long as she lived or until she married again; and to order the president and the secretary of said board to execute and deliver to said relator the certificate provided by law for the amount of money so ordered paid to her as such beneficiary; that the president

of said board and the secretary thereof be commanded and directed to sign said certificate and deliver the same to the relator; that said Board of Trustees be commanded and directed to do any and other things that may be requisite and necessary and to execute any and all vouchers, certificates, and other instruments that may be requisite and necessary to enable the said Martha Jackson to be paid from said police pension fund the annuity to which she is entitled as such beneficiary and as the widow of said Peter Jackson, deceased; and that such other and further orders may be made in the premises as justice may require.

People of the State of Illinois.
Ex rel .....

State of Illinois,)
County of Cook,) ss.

Martha Jackson, being first duly sworn on oath, deposes and says that she is the relator named in the foregoing petition; that she has heard read the above and foregoing petition and knows the contents thereof, and that the same is true.

.....

Subscribed and sworn to before me this 6th day of November, 1916.

.....
Notary Public.

QUO WARRANTO

Quo Warranto is the name of a writ, and also of the whole pleading, by which the government commences an action to recover an office or franchise from the person or a corporation in possession of it. The meaning of Quo Warranto is "by what authority."

The writ commands the sheriff to summon the defendant to appear before the court to which it is returnable to show by what authority he claims the office or franchise.

The proceeding is prosecuted in the name of the

people of the state, and is begun by a petition or information.

The following is a form of an information in the nature of a writ of quo warranto:

State of Illinois,)
County of Cook,) ss.

In the Circuit Court of Cook County.

The people of the State of Illinois,)
)
vs.)
)
Matlock Matthews, Robert Daniel and)
Hugh Phillips.)

Your petitioner, Donald Pratt, State's Attorney in and for the county of Cook, and state of Illinois, respectively represents unto your honors:

That at the regular annual election held in the village of Grayson, in said county, on November 6, 1913, Matlock Matthews, Robert Daniel and Hugh Phillips were duly elected to the office of village trustees of said village for the term of two years, and until their successors should be elected and qualified; that they, and each of them, qualified for and accepted said office within the time prescribed by law, and entered upon the duties of said office, as they might rightfully do; that at the regular annual election held in said village on November 7, 1915, Arnold Fleming received the highest number of votes for president of the board of trustees and was, in fact, duly elected president of the board of trustees of said village; and Drew Linard, M. M. Wyvell and Ben G. Davis received the three highest number of votes for trustees of said village, and became the successors of said Matlock Matthews, Robert Daniel and Hugh Phillips; and within the time required by law said Drew Linard, M. M. Wyvell and Ben G. Davis duly qualified themselves to fill the positions to which they were so elected; but that the said Matlock Matthews, Robert Daniel and Hugh Phillips refused and still do refuse to surrender said offices of village trustees.

That there was, pursuant to law, submitted to a vote of the electors of said village at said annual election of November 7, 1915, the question as to whether said village should become incorporated as a city under the general law relating to cities and villages, passed April 10, 1872; that at said annual election there appeared upon the ballot cast at said election, together with the names of the various candidates to be voted for, the following propositions:

"For city organization under the general law."

"Against city organization under the general law."

That it appears from the poll books of said election and the votes thereof, that nine hundred and sixty-two ballots were cast by the voters of said village at said election; that four hundred and eight of said votes were cast in favor of city organization, and three hundred and ninety-six votes were cast against said city organization; and that the voters of one hundred and fifty-eight did not mark their ballot either in favor of said city organization or against said city organization.

That at a meeting of the board of trustees of said village, held on November 20, 1915, it was determined by said board that the vote in favor of said city organization under the general law had been carried; that thereupon said board ordered the result of said election to be entered upon the records of said village; that said entry was accordingly made; and a certified copy of the same was filed in the recorder's office in said county.

That said Matlock Matthews, Robert Daniel and Hugh Phillips are continuing to exercise the right and perform the duties of trustees of said village, alleging that they are authorized to do so by Section 3, Article 1, Chapter 24, revised statutes of the state of Illinois, notwithstanding the fact that the said Drew Linard, M. M. Wyvell and Ben G. Davis are their duly elected and qualified successors; and they assert that they expect to continue to act as such trustees until city officers for said village of Grayson have been elected and qualified by law.

That said proposition for city organization under the general law was not carried at said election of November 7, 1915, because a majority of the votes cast at such election were not in favor of such city organization · only four hundred and

eight ballots of the total nine hundred and sixty-two ballots cast at said election were in favor of said proposition, whereas a majority of said nine hundred and sixty-two votes was necessary under the statute to affirmatively carry said proposition of city organization.

That said proposition for city organization was not carried for the further reason that said propositions for city organization and against city organization were improperly submitted to the electors upon the same ballot containing the names of various persons to be voted for for the offices of president and members of the board of trustees of said villages, instead of upon separate ballots as by law required.

That an order be entered herein allowing him as such state's attorney, upon the relation of said Drew Linard, M. M. Wyvell and Ben G. Davis, to file an information in the nature of *quo warranto* against the said Matlock Matthews, Robert Daniel and Hugh Phillips, requiring them to make answer unto the people of the State of Illinois by what warrant they claim to hold and execute the offices of trustees of said village of Grayson; and that a summons may thereupon be issued against Matlock Matthews, Robert Daniel and Hugh Phillips, as is by the statute in such case provided.

And your petitioner will ever pray, etc.

.....

State's Attorney.

(Verification.)

SCIRE FACIAS

Scire Facias is the name of a writ (and of the whole proceedings) founded on some public record. It is a judicial writ at common law to revive judgments or to obtain satisfaction thereof.

A judgment is the decision or sentence of the law given by a court of justice or other competent tribunal as the result of proceedings instituted therein for the redress of an injury. Final judgment is one which puts an end to the suit. Judgment upon ver-

dict is the most usual of the judgments upon facts found, and is for the party obtaining the verdict.

After judgment, and for the purpose of carrying into effect the judgment, and even before the judgment is entered of record, the plaintiff may, in general, at any time within a year and a day, and whilst the parties to the judgment continue the same, take out execution. At common law, after a year and a day from the time of signing judgment, the plaintiff can not regularly take out execution without reviving the judgment by *scire facias*.

Scire facias is begun by a *præcipe*, which *præcipe*, in Illinois, would read as follows:

State of Illinois,)
County of Cook,) ss.

In the Circuit Court of Cook County.

John Doe,)
Plaintiff,)
)
vs.)
)
Richard Roe,)
Defendant.)

The clerk of said court will issue a *scire facias* to revive the judgment rendered in the above entitled cause on the 6th day of October, 1900, for the sum of eight hundred dollars ($800.00), direct the same to the sheriff of Cook County to execute, and make it returnable to the October term of said court, 1916.

This 4th day of September, 1916.

.....
Plaintiff's Attorney.

To John Cooke, Esq., *Clerk*.

WRIT OF SCIRE FACIAS

State of Illinois,)
County of Cook,) ss.

In the Circuit Court of Cook County.

John Doe,	Plaintiff,	Date of Judgment, October 6, 1900.
vs.		Amount of judgment, $800.00.
Richard Roe,	Defendant.	

The people of the state of Illinois, to the sheriff of said county, greeting:

Whereas, at the October term of the Circuit Court of Cook county, held in and for the county of Cook and state of Illinois, to-wit, on the first day of October, 1900, before the said court, then judicially sitting at the court house, in the city of Chicago in said county of Cook, plaintiff by the judgment and consideration of said court, recovered a judgment in a certain action then pending in said court against Richard Roe for the sum of eight hundred ($800) dollars damages and the costs of suit, as appears to us of record.

And now, on behalf of the said plaintiff, we have been informed that said judgment still remains in full force and effect and in no wise set aside, reserved, paid off or satisfied, and that execution of the eight hundred dollars ($800) damages and the costs aforesaid still remains to be made to the plaintiff; wherefore, the said plaintiff hath besought us to provide him a proper remedy in this behalf.

We do therefore hereby command you that you summon the said Richard Roe, if he shall be found in your county, personally to be and appear before the said Circuit Court of Cook county, on the first day of the next term thereof, to be holden at the court house, in the city of Chicago, in said Cook county, on the third Monday of October next, then and there to show cause, if any he have or can show, why the said

judgment should not be revived and remain in full force and effect; and furthermore, why execution should not issue against Richard Roe for the eight hundred dollars ($800.00) damages and costs of suit, according to the force, form and effect of the said recovery; and further to do and receive what shall then and there be adjudged by our said court in the premises. And have you then and there this writ, with your return thereon in what manner you shall have executed the same.

Witness, John Cooke, clerk of our said court, and the seal thereof, at Chicago, in said county, this fourth day of September, 1916.

.....

Clerk.

TRESPASS

Trespass is an action to recover damages for injuries sustained by a plaintiff as an immediate consequence of some wrong done forcibly to his person or property.

The action of Trespass is distinguished from trespass on the case, which is an action for injuries committed without force. In many states the distinction between trespass and trespass on the case is abolished by statute, and a declaration good for either is good for both.

The action lies for *injuries to the person* of the plaintiff, as by assault and battery, wounding, imprisonment, and the like. It lies also for forcible injuries to the person of another, whereby a direct injury is done to the plaintiff in regard to his rights as parent, master, etc.

Trespass *quare clausum fregit* (Lat., because he had broken the close), is a form of action which lies to recover damages for injuries to real-estate consequent upon entry without right upon the plaintiff's

land. *Close* means the interest a person has in any piece of ground.

Trespass *vi et armis* (Lat., with force and arms), is a form of action which lies to recover damages for an injury which is the immediate consequence of a forcible wrongful act done to the person or personal property.

State of Illinois,)
County of Cook,) ss.

In the Circuit Court of Cook County.

John C. Hopkins,)
Plaintiff,)
)
vs.)
)
Chicago City Railway Company,)
Defendant.)

For that whereas, the said defendant, before and at the time of the committing of the grievances hereafter mentioned, was a corporation and was possessed of and operating a certain street railway in, upon, and along certain public streets commonly known respectively as, to-wit, Wabash Avenue and 22nd Street, in the city of Chicago, county of Cook, and state of Illinois, and was possessed of and operating certain cars, and was a common carrier of passengers by means of said cars, which were run or propelled on and over said street railway for hire and reward by said defendant in that above mentioned city, to-wit, at the city of Chicago, aforesaid. That said 22nd Street then and there intersected said Wabash Avenue, and it then and there became and was necessary and customary for the passengers who were carried by the defendant in the cars of the defendant upon and over the street railway of the defendant, in and upon said Wabash Avenue, who desired to be carried in the cars of defendant, upon and over the street railway of the defendant, in, upon and along said 22nd Street to change cars or transfer from said Wabash Avenue to said 22nd Street cars of the defendant.

Plaintiff further avers that in and by an ordinance, duly ordained and enacted by the city council of the said city of Chicago, on or about the 25th day of January, 1900, the defendant is given a franchise for the use of said Wabash Avenue and 22nd Street, upon which to run its said cars over the tracks of said defendant company, as will more fully appear by a copy of said ordinance attached hereto, made a part hereof, and marked "Exhibit A."

The said ordinance was duly accepted by said Chicago City Railway Company, in said ordinance mentioned, in manner and form as provided for such acceptance in and by said ordinance; that the street railway of the defendant in, along and upon said Wabash Avenue was constructed and was operated by the Chicago City Railway Company prior to the enactment of said ordinance, and at the time of the committing of the grievances herein mentioned intersected with the street railway of the defendant in, along, and upon 22nd Street.

That in and by a certain other ordinance, duly ordained and enacted by the city council of the city of Chicago, it is provided that the rate of fare shall be five (5) cents per passenger, and that transfers from the cars of the defendant operating on 22nd Street should be made to cars of the defendant operating on Wabash Avenue, and vice versa.

Plaintiff further avers that it was then and there the duty of the defendant to issue to a passenger being carried in one of its said Wabash Avenue cars, who desired to change or transfer from said Wabash Avenue car to one of the 22nd Street cars of the defendant at said intersection, and who paid the regular and lawful fare and reward of five (5) cents to the conductor on said Wabash Avenue car, a certain ticket, commonly known as, to-wit, a transfer or transfer ticket, in and by which said transfer or transfer ticket, said passenger was entitled to be carried in the cars of the defendant upon and over the street railway of the defendant in, upon and along said 22nd Street, without the payment of any other or additional fare or reward whatever.

And the said defendant being a common carrier, as aforesaid, thereupon, heretofore, to-wit, on the 4th day of June, 1909, at the city of Chicago, aforesaid, the plaintiff, at the special instance and request of said defendant, became and

was a passenger in a certain car of the defendant, which was then and there being propelled in a southerly direction on said Wabash Avenue, to be safely carried and conveyed in and by said car on a certain journey, to-wit, to the said intersection of Wabash Avenue and 22nd Street, and then in and by another car of the defendant in a westerly direction upon and over the said railway of the defendant in, upon, and along said 22nd Street. That upon becoming a passenger on said Wabash Avenue car, as aforesaid, the plaintiff then and there paid to the conductor of said Wabash Avenue car, who was a servant of the defendant, the regular fare and reward of five (5) cents, which fare and reward was received by said conductor; that at the time and place aforesaid, the said plaintiff requested the said conductor to issue or give to plaintiff one of the transfers or transfer tickets aforesaid, to enable the plaintiff to be carried in a westerly direction over the street railway of the defendant, in, upon, and along said 22nd Street, from the said intersection of Wabash Avenue and 22nd Street, and then and there the said conductor issued or gave to the plaintiff one of said transfers or transfer tickets; that upon arriving at the intersection of said Wabash Avenue and 22nd Street in the said Wabash Avenue car, in which he had been theretofore carried on said Wabash Avenue, and then and there, within one hour after said transfer or transfer ticket was given or issued to the plaintiff, as aforesaid, the plaintiff entered into and became a passenger in a certain car of the defendant, which was then and there used and operated by the said defendant for the carrying of passengers in a westerly direction from said intersection of Wabash Avenue and 22nd Street, upon and over said street railway, upon and along said 22nd Street, and then and there the conductor of said car, being one of the servants of the defendant, came to the plaintiff and demanded of the plaintiff a fare or reward for the carriage of said plaintiff in said 22nd Street car; that then and there the plaintiff tendered and offered to surrender and pay to the said conductor of said 22nd Street car the identical transfer or transfer ticket issued or given to the plaintiff, as aforesaid, by the said conductor of the defendant on said Wabash Avenue car, which said transfer ticket the said conductor of said 22nd Street car refused to accept in payment of the fare or reward for the carriage of the said

plaintiff in said 22nd Street car, and then and there demanded that the plaintiff pay to the defendant a fare or reward in money; that the plaintiff then and there explained to said conductor the circumstances under which he received the transfer or transfer ticket from the conductor of the defendant on said Wabash Avenue car, and remonstrated with said conductor of said 22nd Street car against the requirement or demand of a fare or reward in money; that thereupon the said conductor with force and arms assaulted the plaintiff and then and there wilfully, wantonly and maliciously, and with excessive and unreasonable force and violence, pulled, thrust, shoved and dragged the plaintiff through and out of the defendant's car, which was then and there filled with divers people and strangers to the plaintiff, and did then and there, in the presence of many people, wilfully, maliciously and wantonly, with great, unnecessary and excessive force and violence, expel, thrust and eject the plaintiff from the said car, and thereby did throw him and cause him to be thrown with great force and violence down to and upon the ground.

By means whereof, the head, body and limbs of the plaintiff were seriously injured, and the bones thereof became and were fractured and broken, and the said plaintiff was otherwise greatly bruised, wounded and injured; and also by means of the premises, the said plaintiff became and was sick, sore, lame and disordered, and so remained and continued for a long space of time, to-wit, from thence hitherto, the plaintiff suffered and underwent great pain, and the said plaintiff's life was despaired of, and the said plaintiff was hindered and prevented from transacting and attending to his necessary and lawful affairs by him during all that time to be performed and transacted, and lost and was deprived of divers great gains, profits and advantages and charges which he might and otherwise would have derived and acquired, and especially said plaintiff was hindered and prevented from transacting, pursuing and carrying on his business as a jeweler, during all that time to be transacted, pursued, and carried on, from which employment and business said plaintiff then and there derived a large income and great profit, to-wit, an income and profit of Ten Thousand ($10,000) Dollars a year, and was permanently disabled from carrying on his employment and business as a jeweler aforesaid, and deprived of divers great

gains, profits, income, wages, salary, commissions and charges which he might and otherwise would have derived from said employment and business; and thereby also the said plaintiff was permanently disabled from at any time thereafter resuming his said employment or business as a jeweler, or from receiving the gains and profits, income, salary, commissions and reward thereof, which he might and otherwise would receive, and also from engaging in or pursuing any other business or employment, and from receiving the gains, profits, and rewards thereof, which he might and otherwise would receive, and thereby the said plaintiff was forced and obliged to and did then and there pay, lay out and expend divers large sums of money, amounting in the whole to Eight Hundred ($800.00) Dollars, and became liable to pay, lay out and expend divers other large sums of money, amounting in the whole to Eight Hundred ($800.00) Dollars, in and about endeavoring to be cured of the said fractures, bruises, wounds and injuries so received, as aforesaid, to the damage of the plaintiff in the sum of Twenty-five Thousand ($25,000) Dollars, and therefore he brings this suit.

.....

Plaintiff's Attorney.

TROVER

An action in Trover is in form *ex delicto* based upon the defendant's tort, and is a species of the action of trespass on the case. The object is to recover damages against one who has, without right, converted to his own use personal chattels in which the plaintiff has a general or special property.

On the next following page is given a form of the declaration in an action of Trover in the State of Illinois for loss of goods by a railroad company, a common carrier:

State of Illinois,)
Sangamon County,) ss.

In the Circuit Court of Sangamon County.

John C. Dawson,)
Plaintiff,)
)
vs.)
)
Baltimore & Ohio Railroad)
Company,)
Defendant.)

For that whereas, the said defendant before and at the time of the delivery to it of the goods and chattels hereinafter mentioned, was and from thence hitherto hath been and still is a common carrier of goods and chattels for hire; and whereas also the said plaintiff, whilst the said defendant was common carrier as aforesaid, to-wit, on the 12th day of June, 1908, at the city of Springfield, in the state of Illinois, to-wit, at the aforesaid city of Springfield, caused to be delivered to said defendant, and the said defendant then and there accepted and received of and from the said plaintiff certain goods and chattels, to-wit, of great value, to-wit, of the value of Nine Hundred ($900.00) Dollars, to be safely carried and securely conveyed by the said defendant from Springfield, aforesaid, to the city of Boston, in the state of Massachusetts, and there safely and securely to be delivered for the said plaintiff for certain and reasonable reward to the said defendant in that behalf; yet the said defendant, not regarding its duty as such common carrier as aforesaid, but contriving and fraudulently intending craftily and subtly to deceive, defraud and injure the said plaintiff in this behalf, did not nor would safely or securely carry or convey the goods and chattels last aforesaid from Springfield, aforesaid, to the city of Boston, aforesaid, nor there safely or securely deliver the same for the said plaintiff; but on the contrary, the said defendant so being such common carrier as aforesaid, so carelessly and negligently behaved and conducted itself in the premises that by and through the carelessness, negligence and default of said defendant in the premises, the goods and chattels last aforesaid,

being of the value last aforesaid, have not been delivered to or for the said plaintiff at said city of Boston or elsewhere, and afterwards, to-wit, on the day and year last aforesaid, at the aforesaid city of Boston, became and were wholly lost to the said plaintiff, to-wit, at the city of Boston, aforesaid.

And whereas, also, afterwards, to-wit, on said 12th day of June, 1908, at the city of Springfield, aforesaid, the said defendant at its special instance and request had the care and custody of plaintiff's certain other goods and chattels of like number, quantity, quality, description and value as those in said first count mentioned. Yet, the said defendant, not regarding its duty in that behalf did not nor would, while it so had the care and custody of the said last mentioned goods and chattels take due and proper care of the same nor any part thereof, but wholly neglected so to do, and took such bad care thereof, that afterwards, to-wit, on the day and year aforesaid, the last mentioned goods and chattels became and were wholly lost to the said plaintiff, to-wit, at the city of Boston, aforesaid.

Wherefore, the said plaintiff saith that he is injured and hath sustained damage to the amount of Nine Hundred ($900.00) Dollars, and therefore brings his suit, etc.

.....

Plaintiff's Attorney.

EQUITY PLEADINGS

In chancery practise, the pleadings consist of the making of the formal written allegations or statements of the respective parties on the record to maintain the writ, or to defeat it, of which, when contested in matters of fact, they propose to offer proofs, and in matters of law to offer arguments to the court. While the substantial object of pleading is the same, the forms and rules of pleading in law and in equity are very different.

The pleadings in equity are less formal than those at common law. The parts of the pleadings are, the bill of complaint, which contains the complainant's statement of the case; the demurrer, by which the defendant demands judgment of the court whether he shall be compelled to answer the bill or not; the plea, whereby he shows some cause why the suit should be dismissed or barred; the answer, which, controverting the case stated by the bill, submits to the judgment of the court upon it, or relies upon a new case or upon new matter stated in the answer, or upon both.

As the pleadings are less formal than those in common law, there is given in this book a complete case from its beginning until its appeal to the reviewing court, including the briefs filed by the appellant and the appellee. The shorthand notes for those pleadings are printed opposite them. The case is that of Mary A. Gross, administratrix of the estate of James L. Gross, deceased, against the Union Trust & Savings

Bank, a corporation, and the Second National Bank, a corporation.

The title of the case shows that Mary A. Gross is administratrix of the estate of James L. Gross, deceased. Now, what does "administratrix" mean?

Turning to the Standard Dictionary we find that an "administrator" is "one who administers something, as the estate of an intestate." Of course, administratrix is the feminine. "Intestate" means "not having made a will" or "a person who dies intestate." So, an administratrix is a woman who administers the estate of one who dies without making a will.

It will be noticed that the solicitor for the complainant is somewhat more careful in drafting his pleadings than is the solicitor for the defendant. When an amount of money is stated in the pleadings it is not only spelled out, but is also represented in figures in parentheses; so, too, are the figures representing the number of the lots and the block in the description of the property. This is done for greater certainty. It will also be noted that when an amount of money is stated and thus represented, the figures are placed with the dollar mark in the parentheses immediately before the word "dollars." One reason for this is that in blank forms for conveyancing, etc., the word "dollars" is printed, and if in filling in the forms the amount of money is spelled out and then repeated in numerals in parentheses, it must be repeated before the word "dollars," which is in the printed form.

The attorney for the defendant is not so particular. In some instances in the answer, the same method is

employed, while in others it is not. The stenographer writing the answer is probably to blame for not being consistent in this regard. While there is no absolute necessity for the repetition, attorneys feel that they should be as certain as possible, and in most instances the figures are repeated in parentheses. When they are repeated, it will be noted that I show the repetition by throwing a circle around the figures or other matter to be repeated, which indicates to me that the attorney has dictated a repetition of those figures.

The first pleading encountered will be a bill of complaint in equity. Why was not this action brought at law? Because there are no known forms in common law which would give adequate relief. An accounting is asked for. No action at law provides for an accounting. The complainant asks that the defendants may be restrained and enjoined from selling, negotiating, or in any manner disposing of a note made by Harry L. Brown. This must be done by an injunction issued by a court in equity. An injunction is also asked against the defendants restraining and enjoining them from selling or attempting to sell the property in question. There being no adequate remedy at law the case must have been brought in equity. Referring to Lesson Twenty-one of the Rose Expert Shorthand Course, attention is called to the chapter on Equity Pleadings, beginning at Page 3, and you are asked to carefully read Pages 3 and 4, descriptive of a bill of complaint.

In this instance the complaint is "verified." In other words, the complainant makes an affidavit that she has read the bill of complaint and that it is true, except as to matters stated on information and belief, and as to

those matters she believes it to be true. The verification given to this bill of complaint prevails in nearly every state, and if after receiving a bill of complaint from dictation, the attorney tells you to add a verification, you should be able to do so. If the verification is absolute and not on "information and belief," the last clause reading "and those stated on information and belief she believes to be true" should be omitted. If, however, it is a verification on "information and belief," the form given herewith is the correct one.

As stated, a verification is an affidavit. What is an affidavit? The Standard Dictionary gives the definition "a voluntary sworn declaration in writing, made before a competent authority." In this case it is made before a notary public, who has authority to administer oaths, etc.

As stated in the lessons, the part reading "Subscribed and sworn to before me this 26th day of September, 1915," is the jurat. The definition of "jurat," given by the same authority, is "the clause in an official certificate testifying that the deposition has been duly sworn to by a competent authority." Seldom, indeed, will the attorney dictate the jurat, but will simply say "jurat of this date." This the stenographer should add.

The bill of complaint, together with the shorthand notes thereof, begin on the next page.

In the Supreme Court of the District of Columbia.

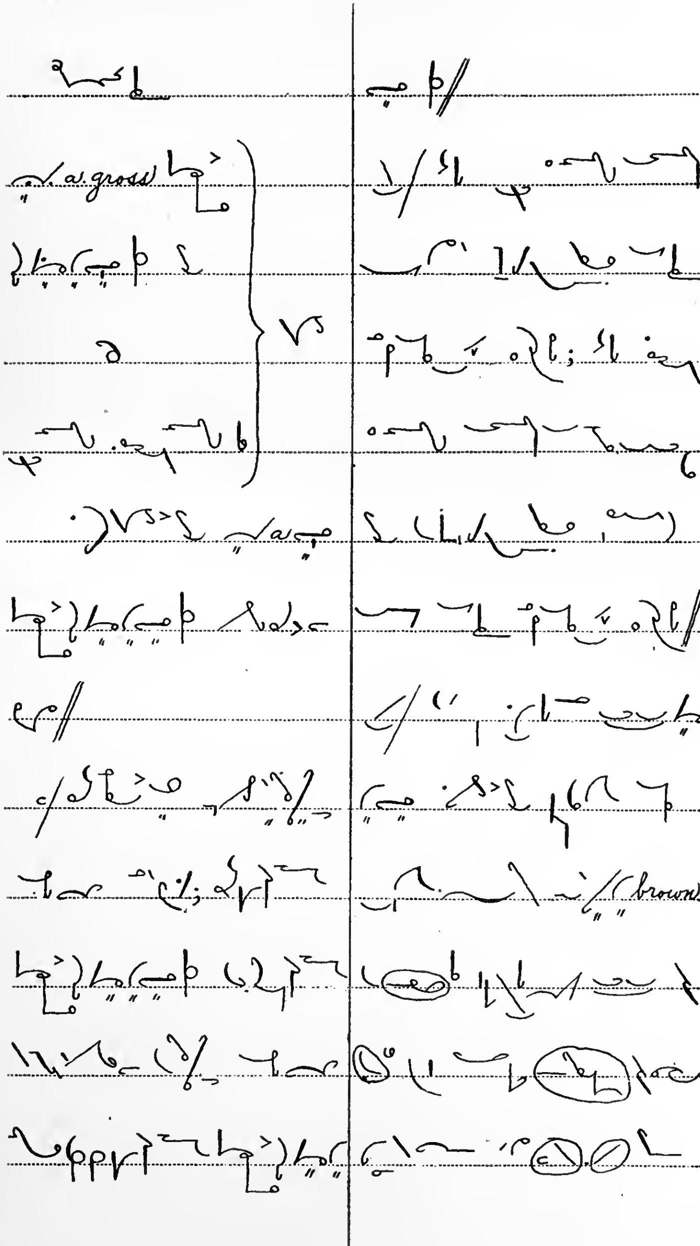
Mary A. Gross, Administratrix of the Estate of James L. Gross, deceased, Complainant,	)	
vs.	)	BILL OF COMPLAINT
Union Trust & Savings Bank, a Corporation, and Second National Bank, a Corporation, Defendants.	)	

The original bill of complaint of the complainant, Mary A. Gross, Administratrix of the Estate of James L. Gross, deceased, respectfully shows to the court as follows:

1. That she is a citizen of the United States and a resident of Prince Georges county, in the state of Maryland, and is of full age; that she is the duly appointed and qualified administratrix of the estate of James L. Gross, deceased, having been thereunto appointed and qualified by and before the Orphans' Court for Prince Georges county, in the state of Maryland, and brings this suit as said duly appointed and qualified administratrix of the estate of James L. Gross, deceased.

2. That the defendant, the Union Trust & Savings Bank, is a corporation, incorporated under the laws of and doing a general banking business in the District of Columbia, and is sued in its own right as hereinafter set forth; that the defendant, the Second National Bank, is a corporation, incorporated in a place unknown to this complainant, for conducting a general banking business, but is not now so engaged in the District of Columbia, and is sued in its own right as hereinafter set forth.

3. That on, to-wit, the eleventh day of August, 1909, James L. Gross, the husband of the complainant, departed this life, intestate, owning and leaving among other property a note of Harry L. Brown for six hundred and ninety-five ($695.00) dollars, dated the twenty-second day of March, 1909, payable five (5) years after date with interest at the rate of six per centum (6%), payable semi-annually, well secured by mortgage on Lots One (1), Two (2), and Three (3), Block Six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(6), West Riverdale, in the state of Maryland, with improvements thereon consisting of a dwelling house; that said note of Harry L. Brown had been deposited by James L. Gross, deceased, with the defendant, the Second National Bank, and was held by said bank at the date of the death of deceased as collateral security for certain indebtedness of James L. Gross, deceased, on certain promissory notes, either as maker or endorser, owned and held by the defendant, the Second National Bank, which at the time of his death, as near as the complainant has been able to ascertain, were as follows: note for eighty ($80.00) dollars, of Robert Corwin, endorsed by James L. Gross, due the twenty-eighth day of September, 1909; note for sixty ($60.00) dollars, of Mary A. Gross, endorsed by James L. Gross, due the fifteenth day of August, 1909; note for fifty-five ($55.00) dollars of Mary A. Gross, endorsed by James L. Gross, due the fifteenth day of August, 1909; note for seventy-five ($75.00) dollars of Robert Corwin, endorsed by James L. Gross, due September 28th, 1909; note for two hundred and one ($201.00) dollars of James L. Gross, endorsed by N. E. Paton, due September 28th, 1909; making a total indebtedness of, to-wit, four hundred and seventy-one ($471.00) dollars, for which the estate of James L. Gross was liable to the defendant, the Second National Bank; that shortly after the death of James L. Gross, the note of Robert Corwin on which James L. Gross, deceased, was endorser, for eighty ($80.00) dollars was taken up and paid by said Robert Corwin; that shortly after the death of James L. Gross, the aforesaid note of Mary A. Gross, on which James L. Gross was endorser, amounting to sixty ($60.00) dollars, was on, to-wit, the fifteenth day of August, 1909, paid by Mary A. Gross; that shortly after the death of James L. Gross, the aforesaid note of Mary A. Gross, on which James L. Gross was endorser, amounting to fifty-five ($55.00) dollars, was taken up on, to-wit, the sixteenth day of August, 1909, by Mary A. Gross giving a new note made by her payable to the order of

John Carleton; that this last mentioned note was taken up and paid by Mary A. Gross, through her attorney, on, to-wit, the twenty-seventh day of October, 1909, in the following manner, that is, with the check of Harry L. Brown for twenty-($20.00) dollars, being the semi-annual interest to the twenty-second day of September, 1909, paid by him on his said note of six hundred and ninety-five ($695.00) dollars, directly to Mary A. Gross, administratrix, and with the check of Mary A. Gross for thirty-seven ($37.00) dollars, making a total of fifty-seven ($57.00) dollars, paid to cover principal, interest, and protest fee; that at the time of the payment of said last mentioned note, it was expressly understood and agreed between the defendant, the Second National Bank, and the complainant, that the defendant, the Second National Bank, would hold and collect the interest and principal of the note of Harry L. Brown and credit the same on the indebtedness of the estate of James L. Gross to the Second National Bank, until all of the said indebtedness of James L. Gross to said bank was paid, and that the balance of the proceeds from the note of Harry L. Brown would thereupon be turned over and delivered to the complainant as administratrix of the estate of James L. Gross, deceased; that the complainant relied upon said understanding and agreement with the defendant, the Second National Bank, and allowed said note of Harry L. Brown to remain in the possession of the defendant, the Second National Bank, for collection of interest (which was always promptly paid), and the principal, the same to be credited upon the indebtedness of James L. Gross to said defendant until said indebtedness was paid in full, and the balance to be paid to this complainant as administratrix.

4. That on, to-wit, the twenty-fourth day of May, 1911, the complainant, through her attorney, addressed a letter to the defendant, the Second National Bank, requesting a statement from said defendant as to the balance then due and for a description of the Brown note, a copy of said letter, dated the twenty-fourth day of May, 1911, is hereto attached, marked "Exhibit A," and prayed to be read and taken as a part hereof; that in reply thereto the complainant, through her attorney, received a letter from the defendant, the Second

National Bank, dated the twenty-sixth day of May, 1911, stating that the indebtedness of James L. Gross to said defendant on that date was two hundred and forty-four ($244.00) dollars, and stating that said defendant still held as collateral security for said indebtedness the note of Harry L. Brown for six hundred and ninety-five ($695.00) dollars, said note being dated the twenty-second day of March, 1909, for five years, with interest at six per cent. per annum, payable semi-annually, with interest paid thereon until the twenty-second day of March, 1911; that the said letter was written and signed by W. T. Phillips, then cashier of the Second National Bank, and a copy of said letter, dated the twenty-sixth day of May, 1911, is hereto annexed, marked "Exhibit B," and prayed to be taken and read as a part hereof.

5. That on, to-wit, the twelfth day of August, 1912, the defendant, the Second National Bank, consolidated, amalgamated, or merged with, or was taken over by, the defendant, the Union Trust & Savings Bank, under terms and conditions unknown to this complainant, but this complainant is informed and believes and therefore avers that the defendant, Union Trust & Savings Bank, took over all of the assets and contracts of the defendant, the Second National Bank, subject to all equities and claims thereon and assumed all of the liabilities of the defendant, the Second National Bank; that among other assets and contracts was the indebtedness of the estate of James L. Gross, to defendant, the Second National Bank, which was secured by and being paid from the proceeds of the note of Harry L. Brown, belonging to the estate of said James L. Gross, deceased; that the defendant, the Union Trust & Savings Bank, is not a bona fide holder or owner without notice for value of the said note.

6. That on, to-wit, the first part of June, 1913, the attorney for Harry L. Brown proposed to the complainant to pay this note in full if allowed a reasonable discount, and thereupon, on the fourteenth day of June, 1913, the complainant, through her attorney, wrote to the defendant, the Union Trust & Savings Bank, which had succeeded to the rights and properties and had assumed all the equities and obligations of the defendant, the Second National Bank, requesting a statement

as to the indebtedness of the estate of James L. Gross to said defendant, a copy of which said letter is hereto attached and marked "Exhibit C," and prayed to be read and taken as a part hereof; that, much to the surprise of the complainant and her counsel, the Union Trust & Savings Bank replied stating that it did not hold the note of Harry L. Brown as collateral security for the indebtedness of the estate of James L. Gross, deceased, but that the said defendant held said note as the absolute owner thereof; that a copy of said letter of the defendant, the Union Trust & Savings Bank, dated the seventeenth day of June, 1913, and signed by W. T. Phillips, manager of the branch of the defendant, the Union Trust & Savings Bank, situated at Fourteenth Street and U Street, Northwest, which was the former location of the defendant, the Second National Bank, is hereto annexed and marked "Exhibit D," and prayed to be read and taken as a part hereof; that the writer of this last mentioned letter is manager of the branch of the Union Trust & Savings Bank, situated at Fourteenth Street and U Street, Northwest, and is the same person as the writer of the letter dated the twenty-sixth day of May, 1911, being then the cashier of the Second National Bank; that said letter of the seventeenth day of June, 1913, was the first notice of any kind whatsoever that was received by this complainant or her attorney that either or both of the defendants claimed title to or to be the owner of said note of Harry L. Brown.

7. That thereupon there was an exchange of correspondence between the attorney for the defendant, the Union Trust & Savings Bank, and the attorney for the complainant, and finally, on the nineteenth day of July, 1913, the attorney for this complainant addressed a letter to Charles O. Murray, President of the Union Trust & Savings Bank, giving the facts in the case and calling upon him for an honest and just settlement of the matter, a copy of which letter, dated the nineteenth day of July, 1913, is hereto annexed, marked "Exhibit E," and prayed to be taken as a part hereof; but the defendant, the Union Trust & Savings Bank, unjustly and wrongfully, and to the damage and loss of this complainant, set up a claim of title and ownership to said promissory note

of Harry L. Brown, and refused to account therefor or for the proceeds therefrom to this complainant, as will appear by the letter signed by defendant's president, Charles O. Murray, dated the thirty-first day of July, 1913, a copy of which letter is hereto annexed, marked "Exhibit F," and prayed to be read and taken as a part hereof; that this complainant alleges that it was expressly understood and agreed between the defendant, Second National Bank, and this complainant that the note of Harry L. Brown should not be sold by said defendant, and that no notice whatever, either verbal or written, was given by the defendant, the Second National Bank, nor by the defendant, the Union Trust & Savings Bank, of any alleged sale of said note of Harry L. Brown, and this complainant is informed and believes and therefore avers that no bona fide sale or offer of sale of said note of Harry L. Brown was ever had or ever occurred.

8. That thereafter on, to-wit, the twenty-first day of September, 1913, Harry L. Brown, through his attorney, paid said note for six hundred and ninety-five ($695.00) dollars to this complainant, with the reduction of five per cent. discount thereon allowed by this complainant for cash payment thereof, and paid the interest thereon until the twenty-second day of September, 1913, thus settling and paying in full his indebtedness to the estate of James L. Gross, deceased, and requested the delivery of his note for six hundred and ninety-five ($695.00) dollars, which he had paid.

9. That thereafter on, to-wit, the twenty-sixth day of September, 1913, this complainant, through her attorney, visited the branch bank of the Union Trust & Savings Bank at Fourteenth and U Streets, Northwest, and then and there made tender of the sum of, to-wit, two hundred and forty-five ($245.00) dollars in gold, or such part or balance as might still be due and owing from the estate of James L. Gross, deceased, to the defendant, the Union Trust & Savings Bank, as the successor or representative of the defendant, Second National Bank, said tender being made to W. T. Phillips, manager of the Fourteenth Street branch of the defendant, the Union Trust & Savings Bank, but that said tender and

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said money, or the proper balance due it, was on said date then and there refused by the defendant, the Union Trust & Savings Bank; that thereupon and at the same time this complainant, through her attorney, fearing that said defendant might attempt to negotiate said note, likewise demanded the delivery and possession of said note of Harry L. Brown for six hundred and ninety-five ($695.00) dollars, wrongfully and unlawfully held by the defendant, Union Trust & Savings Bank, from this complainant, but that said defendant, Union Trust & Savings Bank, failed and refused and still fails and refuses to deliver said note to this complainant, without any just cause and excuse, and threatens to proceed and is about to proceed, against the maker of said note, Harry L. Brown, by sale of his aforesaid real-estate, situated in West Riverdale, Maryland, on which said note of six hundred and ninety-five ($695.00) dollars, was and has been secured by mortgage, all against the objection and protest of this complainant; that this complainant is without adequate and complete remedy at law and accordingly brings this her bill in equity, where such matters are properly cognizable and where full and complete justice and equity may be had in the premises.

Wherefore, the premises considered, this complainant prays:

1. That a writ of subpoena may be issued against the defendant, Second National Bank, and the defendant, Union Trust & Savings Bank, and upon each of them, commanding them and each of them to appear and be made party defendants hereto and answer the exigencies of this bill of complaint.

2. That the defendant, Union Trust & Savings Bank, may be ordered and directed forthwith to surrender and to deliver to the complainant the note of Harry L. Brown, for Six hundred and ninety-five ($695.00) dollars, dated the twenty-second day of March, 1909, payable five years after date, on payment by complainant of the balance of the indebtedness, if any, that may still be due from the estate of James L. Gross to the said defendant.

3. That the defendant, Second National Bank, and the defendant, Union Trust & Savings Bank, may each and both be ordered and directed to account to this complainant for the note of Harry L. Brown for six hundred and ninety-five ($695.00) dollars and the interest received thereon and to account in regard to the credits entered on the indebtedness

of the estate of James L. Gross, deceased, to either or both of said defendants, and the balance, if any, still remaining due thereon.

4. That the defendants, the Union Trust & Savings Bank, and the Second National Bank, may be restrained and enjoined from selling, negotiating, or in any manner disposing of, the said note of Harry L. Brown, for six hundred and ninety-five ($695.00) dollars, dated the twenty-second day of March, 1909.

5. That the defendants, the Union Trust & Savings Bank and the Second National Bank, may each and both be restrained and enjoined from selling or attempting to sell or from causing to be sold the real estate of Harry L. Brown, being lots One (1), Two (2), and Three (3), in Block Six (6), situated in West Riverdale, in the State of Maryland, under the mortgage thereon, securing said note for six hundred and ninety-five ($695.00) dollars.

6. That the defendants and each of them may be required to discover and disclose the terms and conditions on and under which the defendant, Second National Bank, was consolidated, amalgamated, or merged with, or taken over by the defendant, Union Trust & Savings Bank.

7. That the complainant may have such other and further relief in the premises as the court may deem proper and just.

.....

Administratrix of the Estate of
James L. Gross, deceased.

.....

Solicitor for the Complainant.

United States of America,)
District of Columbia,) ss.

Mary A. Gross, being on oath duly sworn, deposes and says that she has read the foregoing bill of complaint by her subscribed and knows the contents thereof; that the facts therein stated of her own knowledge are true, and those stated on information and belief she believes to be true.

.....

Subscribed and sworn to before me this 26th day of September, 1913.

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Notary Public, District of Columbia.

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THE ANSWER

The answer is a defense in writing made by a defendant to the charges contained in a bill of complaint filed by the complainant against him in a court of equity. It must be full and perfect to all the material allegations of the complaint, confessing and avoiding, denying or traversing all the material parts.

In some states the form of an answer consists of:

1. The *title,* specifying which of the defendants it is the answer of, and the names of the complainants in the cause in which it is filed as an answer.

2. A *reservation,* the defendant reserving all the advantages which might be taken by exception to the bill of complaint, which is mainly effectual in regard to other suits.

3. The *substance* of the answer, according to the defendant's knowledge, remembrance, information and belief, in which the matter of the bill, with the interrogatories founded thereon, are answered, one after the other, together with such additional matter as the defendant thinks necessary to bring forward in his defense, whether for the purpose of qualifying or adding to the case made by the bill, or to state a new case in his own behalf.

4. A *general traverse* or denial of all unlawful combinations charged in the bill, and of all other matters therein contained not expressly answered.

In the United States generally the answer has been simplified, but the variations from the old practise consist mainly in dividing the answer into numbered para-

graphs, adjusting its general form to the bill as now drawn, and in omitting the clause reserving exceptions, and the clause denying combination, retaining merely, to form an issue on them, a general traverse of all allegations not expressly answered.

In this case, an answer was filed by the Union Trust & Savings Bank. It takes up the bill of complaint and either admits or denies the paragraphs seriatum. For instance, paragraph 1 is admitted in the answer. That part of paragraph 2 which alleges that the defendant is a corporation is admitted, while an explanation is made in regard to the other defendant, the Second National Bank. The prayer of the answer requests that the bill of complaint be dismissed with the costs to this defendant, and the preliminary injunction dissolved. The answer is verified by the treasurer of the defendant, Union Trust & Savings Bank. The verification differs somewhat from that which obtains in the complaint, as the affidavit is made in the first person. Either form is correct.

Do not pass one word until you have a full understanding of its meaning. It will be noted the answer alleges that at the time of the service of "process" Thomas Steadman was not president of the Second National Bank. What does "process" mean? It is a judicial writ or order—in this case a writ of *subpœna* commanding the defendants to appear and be made party defendants to the suit.

After thoroughly mastering the bill of complaint in every detail, study the answer, the form for which begins on the following page:

In the Supreme Court of the District of Columbia.

Mary A. Gross, Administratrix of the Estate of James L. Gross, deceased, Complainant, vs. Union Trust & Savings Bank, a Corporation; Second National Bank, a Corporation, Defendants.	ANSWER OF UNION TRUST & SAVINGS BANK.

The answer of the Union Trust & Savings Bank to the bill of complaint filed herein, respectfully shows to the court as follows:

1. The defendant admits the averments of paragraph one.

2. This defendant admits that it is a corporation, incorporated under the laws of the District of Columbia, and does a general banking business in the District of Columbia.

Further answering said paragraph, this defendant says that the Second National Bank was a corporation, at one time conducting a general banking business in the District of Columbia, but is not now so engaged in the banking business and does not now exist; that the said Second National Bank ceased to be a corporation by dissolution and surrender of its charter on the twenty-ninth day of January, 1913; that Thomas W. Steadman, upon whom service of process in this cause was made as president of the Second National Bank, was not at the time of service of said process the president or other officer of said Second National Bank, nor did he have any connection therewith, the said Thomas W. Steadman having severed his connection entirely with the said Second National Bank some months prior to the dissolution thereof, to-wit, in May, 1912, by expiration of the term of office for which he was elected and the election of his successor, and since that time said Thomas W. Steadman has not been in any way, either as officer, director, or stockholder, connected with said Second National Bank.

3. Answering paragraph three, this defendant says that it admits that said James L. Gross died as alleged in said paragraph, intestate, but denies that at the date of the death of

Mary A. Gross

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said James L. Gross he owned the note of Harry L. Brown for six hundred and ninety-five ($695.00) dollars, maturing five years from May 22, 1909, and described in the bill of complaint otherwise than is herein set forth, or that the same was well secured; but this defendant, upon information and belief, avers that at the date of the death of said James L. Gross, the said note of Harry L. Brown was secured by a second mortgage on lots one (1), two (2), and three (3), in Block Six (6), West Riverdale, Maryland, there being a first mortgage ahead of said mortgage securing said note, amounting to twenty-eight hundred ($2,800.00) dollars, that materially reduced the security of said note, but that since the death of said James L. Gross, to-wit, during the spring of 1913, and after the death of said Harry L. Brown, the first mortgage on said real-estate was paid from the insurance money left by said Harry L. Brown, and because of the payment and release of said first mortgage the said note has become more valuable; that the said note of Harry L. Brown, prior to the death of said James L. Gross, to-wit, on May 19, 1909, had been surrendered by said James L. Gross to Second National Bank as collateral security for the indebtedness to said bank of two hundred and sixteen ($216.00) dollars and interest, payable on demand, a copy of which said note is hereto annexed and marked "Exhibit A," and also as collateral security for any other liability of said James L. Gross then due or which might thereafter become due or which might thereafter be contracted by said James L. Gross with said Second National Bank, and said collateral note is prayed to be read as a part hereof, as though incorporated herein; that all other obligations of the said James L. Gross to the said Second National Bank were paid prior to February 9, 1912, except the said demand note for two hundred and sixteen ($216.00) dollars, which had been reduced by payment, to two hundred

dollars and interest, and a note of Robert Corwin for twenty-five dollars and interest and protest fees, which was then past due and reduced to Twenty-four Dollars and interest.

This defendant denies that on the twenty-seventh day of October, 1909, or at any other time, said Second National Bank made any agreement or had any other understanding with the complainant, or with any one representing the complainant, that the said Second National Bank would hold and collect on the interest and principal of the note of Harry L. Brown, and credit the same on the indebtedness of the estate of James L. Gross to Second National Bank, or that said Second National Bank would hold and collect on the interest and principal of the note of Harry L. Brown and credit the same on the indebtedness of the estate of James L. Gross to said Second National Bank until all of said James L. Gross' indebtedness to said bank had been paid, or that the balance of the proceeds of the note of Harry L. Brown would thereupon be paid over and delivered to the complainant herein, as administratrix of the estate of James L. Gross, and this defendant says that no such agreement was made as alleged by the complainant; and this defendant denies it was upon such understanding and agreement that the complainant allowed said note of Harry L. Brown to remain in the possession of said Second National Bank for collection of interest and principal until said indebtedness was paid in full, but says that said Harry L. Brown's note was surrendered to said Second National Bank as collateral security to the note of said James L. Gross, set forth herein, and was held by said Second National Bank under the terms of said collateral note and could not have been obtained without the payment of said collateral note.

4. This defendant admits the averments of paragraph four of said bill of complaint, and says that the defendant, Second National Bank, at the date of said letter did hold the notes exactly as set forth in said letter, but further answering said paragraph this defendant says that the said collateral note of said James L. Gross then held by said Second National Bank,

a copy of which is hereto annexed and marked "Exhibit A," and prayed to be read as a part hereof, was payable on demand and that subsequently to said letter of May 26, 1911, to-wit, on or about March 10, 1912, and prior to the purchase of the assets of said Second National Bank by this defendant, said Second National Bank demanded payment of said note, under the terms thereof, and although not required by the terms of said collateral note to notify the complainant of the intention of said Second National Bank to sell the said collateral to said note, unless paid, did so notify the complainant of the intention of said bank to demand payment of said note and that unless same was paid the collateral attached to said collateral note would be sold under the terms thereof, to pay the indebtedness due on said collateral note and the indebtedness of the estate of James L. Gross of $24.75 as hereinbefore set forth, copy of which letter is hereto attached and marked "Exhibit B," and prayed to be read as a part hereof, and no response having been received from said letter to said complainant and said collateral note of $200 and interest and the other indebtedness of $24.75, remaining unpaid, after demand, said Second National Bank did sell said collateral, consisting of the note of Harry L. Brown, under the terms of said collateral note, and from the proceeds of sale paid said collateral note of James L. Gross with same, and also the note of $24.75. That the said Second National Bank obtained for said note of Harry L. Brown all it was worth and a fair and reasonable value for said note of Harry L. Brown, at that time, to-wit, sufficient to pay the indebtedness of the estate of James L. Gross to said bank. At that time said note of Harry L. Brown was only secured by a second mortgage on said property of Harry L. Brown and a sale of said note realized sufficient only to pay the indebtedness of said James L. Gross.

Said real estate note of Harry L. Brown was subsequently discounted in the assets of said Second National Bank and endorsed to this defendant for value before maturity, and without notice of any defense either as set out in said bill of complaint or otherwise, prior to maturity and on the 21st day of May, 1912, when all the assets of the said Second National Bank were purchased by and endorsed to this defendant.

5. This defendant denies that the Second National Bank and this defendant were consolidated, amalgamated or merged together, either under terms or conditions known or unknown to the complainant, and says the fact is that all of the assets of the said Second National Bank were bought by this defendant, all of the notes of said Second National Bank endorsed to this defendant, among which was the note of Harry L. Brown, which was endorsed to this defendant in the due and usual course of business for value and before maturity of said note. This defendant says it is untrue that there has ever been a merger between the said Second National Bank and this defendant, but says that all the promissory notes held by said Second National Bank were bought by this defendant and endorsed to this defendant by said Second National Bank in consideration of this defendant assuming and paying the depositors of the said Second National Bank the money by them deposited and due from said Second National Bank on the 21st day of May, 1912, and the payment by this defendant to the Second National Bank of cash of an amount equal, together with the deposits, on the face value of the notes held by the said Second National Bank, among which was the note of Harry L. Brown, so that this defendant paid the said Second National Bank for said note of Harry L. Brown, the sum of $695.00 and accrued interest to May 21, 1912, for said note. Defendant denies that the assets of said Second National Bank were taken over by this defendant, subject to all equities and claims thereon, or that this defendant assumed all the liabilities of the said Second National Bank. Defendant denies that among the assets or contracts transferred to this defendant by said Second National Bank was the indebtedness of said James L. Gross to said Second National Bank, but says that

the said James L. Gross never owed this defendant any money by reason of any transactions with said Second National Bank, that it has never had among the assets passed to it by said Second National Bank any note of said James L. Gross, but that there was in the assets of said Second National Bank, which was endorsed and negotiated to this defendant in the due and usual course of business, for value and before maturity, the note of Harry L. Brown, for $695.00, as hereinbefore set forth, and the defendant says that this defendant is a bona fide holder and owner for value before maturity and without notice, of said note.

6. Answering paragraph six, this defendant says that it is unable to either affirm or deny, and if material calls for strict proof, of any agreement between the attorney for Harry L. Brown, or the estate of Harry L. Brown, and the complainant in this suit. The defendant says that the attorney for the complainant wrote to this defendant a letter as set forth in "Exhibit C," to the bill of complaint, and that the defendant replied in accordance with "Exhibit D," which this defendant prays may be read as part of this answer, and says the facts contained in said "Exhibit D" are true. Defendant says that this defendant has not succeeded to the rights and property and assumed all the equities and obligations of the said Second National Bank, as set forth in said paragraph six, but says that the facts are as hereinbefore stated. Further answering said paragraph six, the defendant says that W. T. Phillips was cashier of the Second National Bank and that subsequent to the purchase of the assets of the said Second National Bank by this defendant, the said W. T. Phillips was employed by this defendant as manager of its Fourteenth Street branch, but said W. T. Phillips is only an employee of this defendant and not an officer. This defendant, by reason of being uninformed, is unable to either admit or deny the averments of said bill of complaint, that the letter of June 17, 1913, was the first notice that the complainant or her attorney had that this defendant claimed title to said note of Harry L. Brown, but if material, calls for strict proof thereof. This defendant says that the said complainant had notice of the intended sale of said collateral by the said Second National Bank

as hereinbefore set forth, by notice addressed to her, at her post office address, and mailed to her by the United States mails, and that no occasion has arisen for this defendant to say anything to the attorney for the complainant, or to complainant herein, about said note of Harry L. Brown, not knowing either had any interest therein.

7. Answering paragraph seven, this defendant admits that said attorney for the complainant wrote "Exhibit E" to the president of this defendant, although said attorney for the complainant then well knew and had previously been in correspondence with the attorney representing this defendant and knew that this defendant was represented by counsel, with whom he had previously been in correspondence about said matter, and that this defendant replied to said attorney for the complainant, in accordance with "Exhibit F," and says that the facts contained in said "Exhibit F" are true, and prays that the same may be read as part hereof, as though incorporated herein; that complainant has failed to attach to his bill of complaint an enclosure with said "Exhibit F," which is hereto attached as "Exhibit B." Defendant says that this defendant did not unjustly and wrongfully set up and claim the title and ownership of said promissory note of Harry L. Brown, but says it rightfully owns said note, having purchased same for value and before maturity, without any notice of defense thereto, from said Second National Bank and said Second National Bank having endorsed said note to this defendant, and further says that this defendant did rightfully refuse to account to this complainant for said note or to accept from this complainant any sum of money less than the face value of said note for same. Defendant denies that it was expressly understood or impliedly understood or agreed between the complainant and the Second National Bank that the note of Harry L. Brown should not be sold by said Second National Bank, and says there was no such agreement. The defendant further denies that no notice whatever, either verbal or written was given by the defendant, Second National Bank, or by this defendant of the sale of said note of Harry L. Brown, and says the fact is said Second National Bank be-

fore selling said note of Harry L. Brown, under the collateral note held by defendant, Second National Bank, from said James L. Gross, notified the complainant, through the United States mails, of its intended sale, although by the terms of said collateral note, no notice was required, and that the sale was made in accordance with the terms of said collateral note.

This defendant further says that, at the time of purchase of said note of Harry L. Brown from the said Second National Bank by this defendant, and endorsement of said Second National Bank to this defendant of the said note of Harry L. Brown, it, this defendant, had no knowledge of any history of said note of Harry L. Brown for $695.00 as aforesaid, but that simply the said note of Harry L. Brown was held among the assets of said Second National Bank as one of its real estate loans, had not matured and was endorsed to this defendant in good faith, this defendant believing the same was a bona fide obligation of said Harry L. Brown, and accepted the same for value and before maturity, and that it was not for some time thereafter, and after the purchase price of said note had been paid to said Second National Bank, that the defendant discovered the history of said note, as herein set forth, none of which facts were shown to this defendant at the time it purchased said note in May, 1912. Further answering said paragraph seven, this defendant says that there was a bona fide sale of said note, by said Second National Bank under the terms of the collateral note of James L. Gross, and although notice of said intended sale was given to said complainant, no notice was required under the terms of said collateral note.

8. Answering paragraph eight, this defendant says it has no knowledge of the matters contained in said paragraph, and therefore neither affirms nor denies the same, but if material calls for strict proof thereof. Further answering said paragraph eight, this defendant says that the said Harry L. Brown, or his estate, cannot discharge his obligation to the defendant on said note by paying the complainant therefor.

9. Answering paragraph nine, defendant says that on the 26th day of September, 1913, Mr. Daniel W. McKelway, representing the complainant, came into the branch bank of the defendant at Fourteenth and U Streets, and there said he desired to take up a note due by said James L. Gross to said defendant, and that at the time said Daniel W. McKelway came to said bank he well knew that this defendant did not hold any such note of James L. Gross and that said James L. Gross was not indebted to this defendant in the sum of $245 and that this defendant had no right to accept money due for an obligation which this defendant did not hold, or know anything about. Defendant says that said James L. Gross is not and was not on the 26th day of September, 1913, indebted to this defendant in the sum of $245 by reason of any note held by this defendant. This defendant says that it is unable to know what the attorney for the complainant feared, but this defendant has never threatened or indicated any attempt to negotiate said note, although it claims the right to do so, if it feels so inclined, and says that this defendant has the right to enforce the payment of said note, as the same is justly due to this defendant. Defendant says the said Daniel W. McKelway only desired to pay this defendant the sum of $245 and obtain for same notes for $695. This defendant says it is true that defendant refused and still refuses to deliver the said note to this complainant because defendant says it has a right to said note and owns the same, and this defendant denies it has ever threatened to proceed against the maker of said note, by the sale of said real estate in West Riverdale, Maryland, but says it has the right to do so, and likewise has a right to enforce the personal payment of said obligation from said estate of Harry L. Brown, when said note matures.

And having fully answered, this defendant prays that this bill of complaint may be dismissed with the costs to this de-

Abbey, Edwin Austin	Bacon, Henry
Adams, Herbert	Barnard, George Grey
Alexander, John White	Barnhorn, Albert
Ames, Ezra Weston	Barrie, George
Anderson, Wilhelm	Barry, Joseph Apollon
Andrews, Benjamin	Bartholdi, Frédéric Auguste
Appleton, William Worthen	Bartlett, Paul Wayland
Arms, John Taylor	Bashkirtseff, Marie
Armstrong, Edwin James	Batchelder, Ernest Lyon
Arnold, Bion J.	Bates, Arlo
Atherton, Gertrude Franklin	Bates, Blanche
Atkinson, Edward	Bates, Harry
Austin, Mary	Bates, Katharine Lee
Ayer, Francis Wayland	Beach, Chester
Babcock, Elisha Benjamin	Beaux, Cecilia
Bacon, Edgar Mayhew	Bellamy, Edward
Bacon, Henry	Bellows, George Wesley

fendant and the preliminary injunction heretofore granted may be dissolved.

UNION TRUST & SAVINGS BANK,

By .....
Vice-President and Treasurer.

.....
Solicitor for Union Trust and Savings Bank.

United States of America,)
District of Columbia,) ss.

I, Henry J. Samuels, do solemnly swear that I am vice-president and treasurer of the Union Trust and Savings Bank, the defendant in the foregoing answer; that I have read the said answer and the facts stated therein upon personal knowledge are true, and those stated upon information and belief, I believe to be true.

.....

Subscribed and sworn to before me this 6th day of October, 1913.

.....
Notary Public, District of Columbia.

AFFIDAVITS

The bill of complaint asked for a surrender of the note in question on payment by complainant of the balance of the James L. Gross indebtedness and also prayed for an accounting. An injunction was requested restraining the defendants from disposing of the note in question and from selling or attempting to sell the mortgaged property. A preliminary injunction was granted by the court.

An injunction is a prohibitory writ, issued by the authority and generally under the seal of a court of equity, to restrain one from doing an act which is deemed inequitable so far as regards the right of some other party or parties to such suit or proceedings in equity.

Preliminary injunctions are used to restrain the party enjoined from doing or continuing to do the wrong complained of, either temporarily or during the continuance of the suit or proceeding in equity in which such injunction is granted and before the rights of the parties have been settled by the decree of the court in such suit or proceeding. The sole object of a preliminary injunction is to preserve the *status quo* until the merits can be heard. The *status quo* is the last peaceable, uncontested *status* which preceded the pending controversy, and a wrongdoer cannot shelter himself behind a sudden or recently changed status.

The answer prays for a dissolution of the preliminary injunction. In support of the answer and of a motion to dissolve the injunction, there were filed two

affidavits, one of W. T. Phillips and the other of Thomas W. Steadman. These follow the answer in their regular order. Then is printed the replication.

The replication is the complainant's answer to the defendant's plea or answer. A general replication is a general denial of the truth of the defendant's plea or answer, and of the sufficiency of the matter alleged in it to bar the plaintiff's suit. Such a replication is always sufficient to put in issue every material allegation of an answer or amended answer, unless the rules of pleading imperatively require an amendment of a bill.

The form of affidavit is shown on the following pages and that of a replication immediately follows.

Issue having been joined, the case came on for hearing, the court finding for the complainant. This is the formal order of court which is entered of record, the form for which is shown on page 111. From this decree the defendant noted an appeal to the higher court, the Court of Appeals of the District of Columbia, and requested the court to fix the amount of the appeal bond to act as a supersedeas. The court fixed the amount of the bond at $900. This is not a pleading in the sense that it is filed with the papers, but is in the nature of an order noted in the docket.

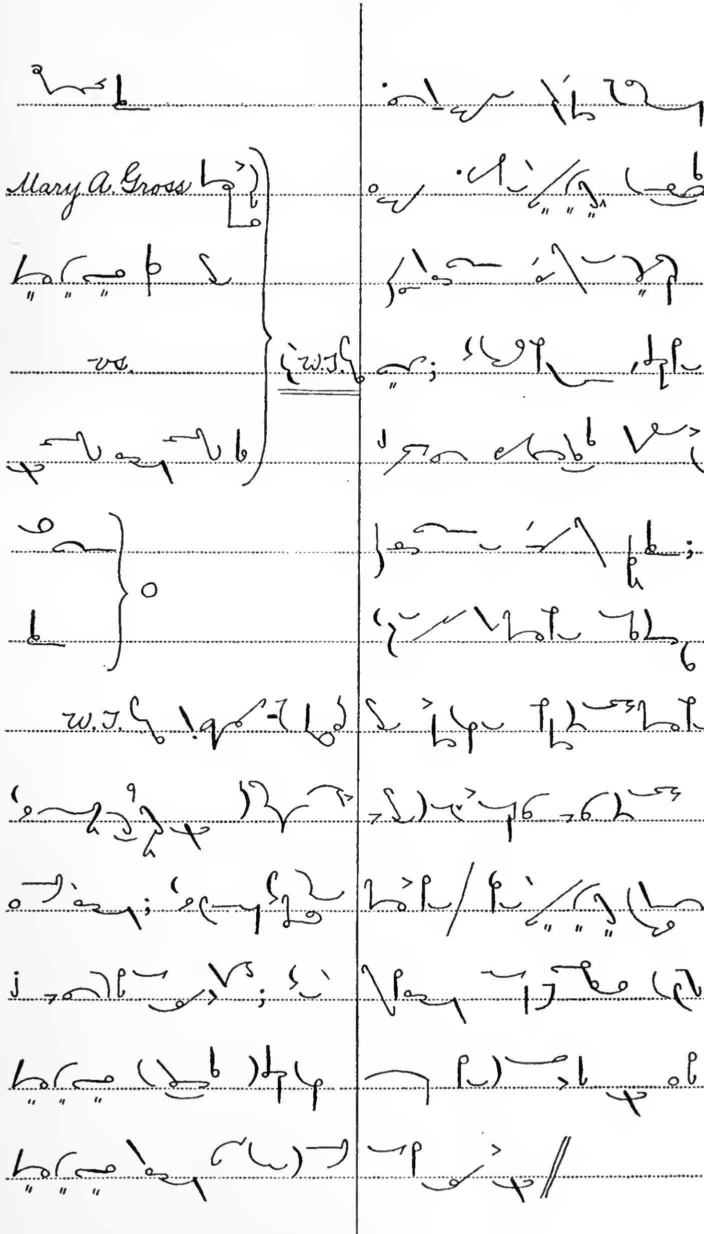
The defendant then filed the Assignment of Errors, as they appear in the form shown on page 114. This is followed by the Designation of Record, in which the Clerk is requested to include in the transcript of record the various pleadings. These follow in their regular order.

In the Supreme Court of the District of Columbia.

Mary A. Gross, Administratrix of the Estate of James L. Gross, deceased, Complainant,	
vs.	AFFIDAVIT OF W. T. PHILLIPS
Union Trust & Savings Bank, a Corporation; Second National Bank, a Corporation, Defendants.	

United States of America,)
District of Columbia,) ss.

W. T. Phillips, being first duly sworn on oath, deposes and says, that he is the manager of the Fourteenth Street Branch of the Union Trust & Savings Bank and was formerly employed as cashier of Second National Bank; that he is fully acquainted with all the transactions herein contained, and the same are set forth in the answer to the bill of complaint; that the note of James L. Gross for two hundred and sixteen dollars was discounted for said James L. Gross by Second National Bank while the affiant was cashier, the same being a collateral note, payable on demand, and having surrendered as collateral the real estate note of Harry L. Brown for six hundred and ninety-five dollars, which was secured by second mortgage on certain property in West Riverdale, Maryland; that the officials of said bank who discounted the said note did not regard the same as worth more than two hundred dollars, by reason of the fact it was a second mortgage note on country property outside of the District of Columbia; that although not required by the terms of said note, notice was given to this complainant of the demand for said note, and said demand was made in accordance with the terms of said note, and the complainant was notified of the intended sale, and the sale was made in accordance with the terms of the said note. That said note of Harry L. Brown afterwards became the property of said Second National Bank, and in the due and usual course of business, for value and before maturity, said note was en-



Mary A. Gross
vs.
W.T.
W.T.

dorsed to the defendant, Union Trust & Savings Bank, as set forth in the said answer of the Union Trust & Savings Bank.

Affiant further says that at the time of the visit of Daniel W. McKelway to the Fourteenth Street branch of the Union Trust & Savings Bank, in the month of September, 1913, he claimed that this affiant had made an agreement with him by which this affiant would not foreclose the collateral note of James L. Gross and sell the said note of Harry L. Brown, and affiant responded to said Daniel W. McKelway that he had never seen said Daniel W. McKelway before and he was absolutely sure he never made any such agreement for two reasons, first, that he did not know Mr. Daniel W. McKelway, and second, that it had not been within his official duties or prerogatives as cashier of the said Second National Bank to make any such agreement, or within his power to do so, as all such matters were determined by the then president of the Second National Bank, Mr. Thomas W. Steadman.

.....

Subscribed and sworn to before me this 7th day of October, 1913.

.....

Notary Public, District of Columbia.

In the Supreme Court of the District of Columbia.

Mary A. Gross, Administratrix of the Estate of James L. Gross, deceased, Complainant,	
vs.	AFFIDAVIT OF THOMAS W. STEADMAN
Union Trust & Savings Bank, a Corporation; Second National Bank, a Corporation, Defendants.	

United States of America,)
District of Columbia,) ss.

Thomas W. Steadman, being duly sworn, says that he was the president of the Second National Bank from the date of its organization until May, 1912; that while he was president of said bank, the note of James L. Gross, dated May 19, 1909, was discounted; that at that time said collateral note had attached to it the note of Harry L. Brown for six hundred and ninety-five dollars, secured by second mortgage on real estate in West Riverdale, Maryland; that this affiant became convinced that the said security was worth about two hundred dollars; that said note remained in the bank until February, 1912, and had been reduced to about two hundred dollars, and in addition said James L. Gross was liable to said bank for the sum of Twenty-four Dollars by reason of his endorsement of a note of one Carleton; that this affiant, on February 9, 1912, addressed a letter to Mary A. Gross, the complainant, and mailed the same in the United States mails properly addressed, a copy of which letter is attached to the answer of the Union Trust & Savings Bank and marked "Exhibit B"; that on or about March 10, 1912, the said notes of James L. Gross, not having been paid, this affiant, in the usual course of business, had said notes sold and received for them all that affiant believed they were worth and only sufficient to pay the claims of the bank against said James L. Gross.

Affiant further says that he never made any agreement with the said Daniel W. McKelway or with the complainant by which said collateral note would not be foreclosed, and that the interest on the Brown note would be credited on the complainant's note; that this affiant never heard of any such alleged agreement until after he ceased to have any connection with the Second National Bank, in May, 1912, when a claim to that effect was made by Mr. McKelway and the officials of the Union Trust & Savings Bank asked this affiant about it; that this affiant made no agreement of the kind alleged by Mr. McKelway in the bill of complaint to the effect that the said collateral note would not be foreclosed, and knows of no one who did make any such agreement.

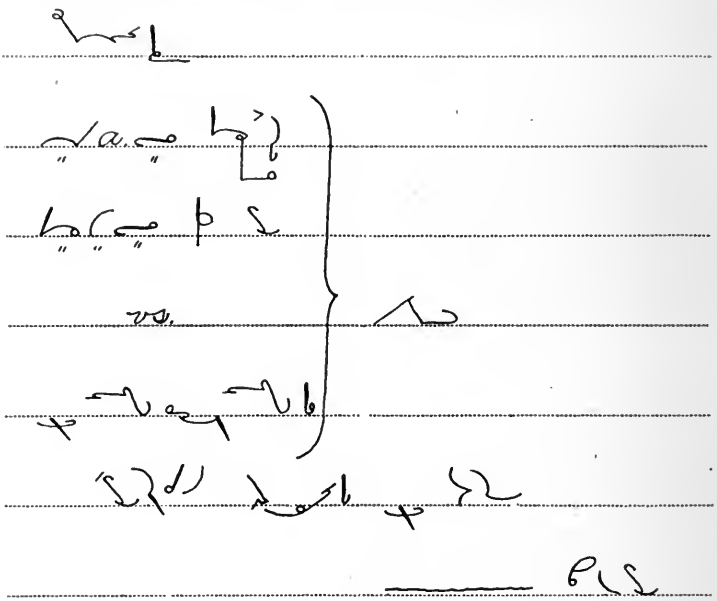
Affiant is not now president and has no connection with the Second National Bank, his term of office having expired on or about May, 1912, and affiant is informed and verily believes that the Second National Bank does not now exist, its charter having been surrendered and the corporation dissolved.

.....

Subscribed and sworn to before me this 7th day of October, 1913.

.....

Notary Public, D. C.



In the Supreme Court of the District of Columbia.

Mary A. Gross, Administratrix of the Estate of James L. Gross, deceased, Complainant,	)
vs.	) REPLICATION.
Union Trust & Savings Bank, a Corporation; Second National Bank, a Corporation, Defendants.	)

The complainant hereby joins issue upon the answer of the defendant, Union Trust & Savings Bank, filed herein.

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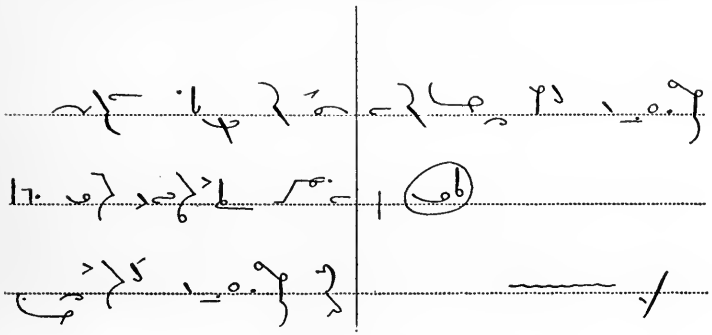
Solicitor for Complainant.



From the above decree, the defendant, Union Trust & Savings Bank, hereby, on the same day and date, notes an appeal to the Court of Appeals of the District of Columbia, and requests the court to fix the amount of the appeal bond to act as a supersedeas, and thereupon the court hereby fixes the amount of said bond to act as a supersedeas at Nine Hundred ($900.00) Dollars.

.....

Judge.

(NOTE.—In the regular order of procedure, the above order is entered after the decree of the court. It appears before the decree in this book for purpose of convenience in making up the pages.)

In the Supreme Court of the District of Columbia.

Mary A. Gross, Administratrix of the Estate of James L. Gross, deceased, Complainant,	
vs.	DECREE.
Union Trust & Savings Bank, a Corporation; Second National Bank, a Corporation, Defendants.	

This cause coming on to be heard upon the pleadings and evidence produced in open court and the admission of the defendant, Union Trust & Savings Bank, for the purposes of this suit to assume any and all liability that may be proven or established against the defendant, Second National Bank, said admission being made in open court at the final hearing of this cause, and after being argued by counsel and duly considered by the court, it is by the court this twenty-sixth day of March, 1914,

Ordered, Adjudged and Decreed that the complainant do recover from the defendant, Union Trust & Savings Bank, and that said defendant do forthwith deliver to the complainant, the promissory note of Harry L. Brown for six hundred and ninety-five dollars, dated March 22, 1909, secured by mortgage on lots one (1), two (2), and three (3), in block six (6), in West Riverdale, Maryland, upon the payment by the complainant to the defendant of the sum of one hundred and eighty-eight ($188.00) dollars, being the net amount of the indebtedness of the estate of James L. Gross, deceased, to the Union Trust & Savings Bank on, to-wit, September 26, 1913.

And it is further Ordered, Adjudged, and Decreed that the restraining order heretofore issued herein be and the same is hereby continued pending any appeal herein; all with costs to the defendant.

And it is further Ordered, Adjudged and Decreed that the decree *pro confesso* heretofore passed herein against the defendant, Second National Bank, be and the same is hereby made final.

.....

Judge.

In the Supreme Court of the District of Columbia.

Mary A. Gross, Administratrix of the Estate of James L. Gross, deceased, Complainant, vs. Union Trust & Savings Bank, a Corporation, Defendant.	ASSIGNMENT OF ERRORS.

The defendant, Union Trust & Savings Bank, for assignments of errors says that the court erred:

First: In holding that, if the facts are such as were attempted to be brought out by the complainant's evidence, namely, that the defendant had wrongfully sold a promissory note owned by the complainant, that there was ground for equitable relief. The defendant submits that, in such event, the action should have been one at law for the conversion of the property or for the recovery of its possession.

Second: In holding that there was any consideration shown for the agreement alleged with the counsel for the complainant that the bank would not sell the promissory note of Harry L. Brown, which had been attached to the collateral note of James L. Gross.

Third: In finding as the fact that there was an agreement made between the Second National Bank and the complainant, by which the interest on the Brown note would be allowed to pay the principal and interest on the Gross note, or any agreement, as testified to by counsel for complainant.

.....

Solicitor for Union Trust and Savings Bank.

In the Supreme Court of the District of Columbia.

Mary A. Gross, Administratrix, etc., Complainant, vs. Union Trust & Savings Bank, a Corporation, Defendant.	DESIGNATION OF RECORD.

The clerk will please include in the transcript of record to be filed herein:

1. The Bill of Complaint filed September 26, 1913.
2. Answer of the Union Trust & Savings Bank, and affidavits attached, filed October 7, 1913.
3. Replication filed October 10, 1913.
4. Final decree, March 26, 1914.
5. Appeal noted March 26, 1914, and bond as supersedeas and costs filed.
6. Appeal bond approved April 6, 1914.
7. Assignment of errors.
8. This designation.

.....

Solicitor for Union Trust and Savings Bank.

TRANSCRIPT AND BRIEFS

The printed record as made up in each case for a reviewing court (in this case the Court of Appeals of the District of Columbia), is called the Transcript of Record. It contains the pleadings filed in the lower court, an abstract of the testimony adduced at the hearing, all orders entered by the court, and all matters designated in the Designation of Record. This is printed and certified by the Clerk of the trial court to be a true and correct transcript of the record.

The party taking the appeal is then designated as the "appellant"; the party defending the appeal is the "appellee." The appellant in this case was the defendant in the lower court, the Union Trust & Savings Bank, while the appellee was the complainant, Mary A. Gross, administratrix. Had the defendant been successful in the trial court and had an appeal been taken to the upper court, the appellant would have been Mary A. Gross, administratrix, and the appellee the Union Trust & Savings Bank.

After filing the transcript the appellant files his brief, which is a legal argument on the questions which the record brings before the appellate court. This is followed by a brief on behalf of the appellee. Briefs are generally printed and vary somewhat according to the purposes they are to subserve.

The rules of most of the appellate courts require the filing of printed briefs for the use of the court and opposing counsel, at a time designated for each side before hearing. In the rules of the Supreme Court and the Circuit Court of Appeals of the United States the

brief is required to contain a concise statement of the case, a specification of errors relied on, including the substance of the evidence, the admission or rejection of which is to be reviewed, or any extract from a charge excepted to, and a brief of argument exhibiting clearly the points of law or fact to be discussed, with proper reference to the record or the authorities relied upon. Such a brief will generally be sufficient to answer the requirements of any of the courts in the several states whose rules require printed briefs.

For the purpose of illustrating brief work, there is given in full the brief for appellant and the appellee in this proceeding. It will be noted that, after the title and venue, the "Statement of Facts" is printed, from the viewpoint of the appellant. In this, comment is made on the evidence adduced at the trial. Then follows the "Argument" which is divided into three heads, namely, "The Jurisdiction of Equity," claiming that an action at law was the real remedy, "The consideration for the Agreement," claiming lack of consideration; and "The Facts," in which it is claimed that the decree was not justified by the facts brought out in the evidence. This, together with the brief of appellee, should furnish ample practise for brief work, which is some of the most important work in a law office.

Appellant's brief will begin on the next page, and will be immediately followed by the brief of appellee, which controverts the contentions and arguments advanced in appellant's brief, discusses in their order the assignments of error, analyzes the authorities cited by appellant and quotes from the decisions of previously determined cases to sustain appellee's contentions.

In the Court of Appeals of the District of Columbia.

Union Trust & Savings Bank, a Corporation,
Appellant,
vs.
Mary A. Gross, Administratrix of the Estate of James L. Gross, deceased,
Appellee.

BRIEF FOR APPELLANT.

STATEMENT OF FACTS

This is an appeal by the defendant, Union Trust & Savings Bank, from a decree in equity.

The principal facts in the case are developed by two witnesses, one upon each side, and the surrounding circumstances of their testimony.

It is the contention of the appellant that, under the state of facts shown by the records, it was entitled to a trial by jury to determine the truth of the controversy between the two witnesses, and that as equity had taken cognizance of the situation, as developed in the testimony, it has been deprived of its right of trial by jury. The appellant likewise submits that the evidence preponderates in its favor, and that the complainant has not sustained the burden of proof cast upon her by the law.

The subject matter of the controversy is a promissory note secured by second mortgage on certain real estate at Riverdale, Maryland, which was signed by Harry L. Brown, and which is claimed by the complainant to be owned by her as administratrix of the estate of James L. Gross.

It appears that on May 19, 1909, this real estate note was delivered by James L. Gross to the then Second National Bank as collateral to a note which is set forth on page 28 of the record, which gave to the Second National Bank "full power and authority * * * in case of such default in the payment of any of the liabilities * * * at maturity to sell, assign, and deliver the whole or any part of such securities * * * at any brokers' board, or public or private sale, at its option, at any time or

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times thereafter, without advertisement or notice to him, with the right on its part to become purchaser thereof at such sale or sales, freed or discharged of any equity of redemption, and after deducting all legal or other costs and expenses for collection, sale and delivery, to apply the residue of the proceeds of such sale or sales so made to pay any, either or all of said liabilities."

It is the contention of the complainant, testified to by her counsel, Daniel W. McKelway, that Thomas W. Steadman, the then president of the Second National Bank, on October 27, 1909, told complainant's counsel that, as the indebtedness of Mr. Gross to the bank was less than the Brown note, the interest of the Brown note would be credited on the principal and interest of the Gross indebtedness, and take care of itself until the interest on the Brown note, and if necessary the principal on the Brown note, would wipe out the indebtedness of Mr. Gross to the bank. The same day this agreement was made, the witness, McKelway, used the check of Twenty Dollars of Brown's, which had been given to Mrs. Gross as part of Brown's interest on the note delivered as collateral security to partially pay and take up an entirely separate note of Mrs. Gross not connected with that transaction. Mr. McKelway stated that the agreement mentioned by him had been in the presence of some other employee of the bank whom the witness did not know.

This statement is flatly contradicted by Mr. Steadman at page 30 of the record. Various payments of interest were made on the Gross collateral note from the date it was discounted by the bank in 1909 until February 9, 1912, when the bank caused a letter to be sent to Mrs. Gross, properly directed to her home at Riverdale, Maryland (page 29), informing her that the loan had been criticized by the bank and unless arrangements were made by March 19, 1912, to take the note out of the bank the collateral would be sold. Although Mrs. Gross

testified that she sent all papers to Mr. McKelway which she received, and that her proper post office address was Riverdale, Maryland, she did not receive this letter (page 20) Steadman testified that he signed the letter and turned it over to Phillips, cashier of the bank, and Mr. Phillips testified (page 37) that the letter had been dictated to him by Steadman and after the letter had been written he took it to Steadman for him to sign, folded the letter in an envelope, sealed the envelope and placed it in the receptacle used for that purpose, outside of the receiving teller's cage, where all mail was deposited and where at the end of the day the boy would take it up and mail it, as was his duty, in the usual course of business. The letter was admitted in evidence without objection on the part of the complainant after a witness testified that he was runner for the bank and defendant had tendered two other witnesses to show that all such mail matter placed in the box was invariably mailed (page 38). The carbon copy offered in evidence on its face showed its age.

Witness Steadman testified that prior to the writing of this letter, the Gross loan had been criticized on at least three different occasions by the bank examiner and demand made on the bank that the money be collected and the note taken out of the bank. That prior to Gross' death, witness had tried to collect it from Gross; that the witness had no agreement with Mr. McKelway on October 27, 1909, or at any other time, relative to the Brown note, as testified to by McKelway (page 29), and identified the entries in the bank's book indicating what parts were in witness's handwriting and what parts were in the handwriting of the note teller, Mr. Richard Thomas, who is not now in Washington. Witness had come into the bank about the time McKelway was leaving but had no conversation with McKelway whatever. After the letter had been

sent to Mrs. Gross and no response had been received, witness caused the note to be sold to Mr. Phillips, who paid his own money for it, endorsed the real estate note so purchased by him and discounted it in the Second National Bank. Mr. Phillips was not a straw man but a bona fide purchaser, and his endorsement added sufficient security for the money because Phillips was good for the money. In the sale of the Second National Bank to the Union Trust & Savings Bank, the note passed by endorsement with the other assets.

Counsel for the Union Trust & Savings Bank admitted for the purpose of this suit that under the agreement between the Union Trust & Savings Bank and the Second National Bank, if there had been any liability of the Second National Bank the Union Trust & Savings Bank was liable for it.

During the cross examination of McKelway he identified a great deal of correspondence between him and the bank, and finally stated that his recollection of the matter was not very clear as there are many things a lawyer has to attend to and there were a great many matters on his mind at that time. Asked as to what he meant by the words in his letter, "if possible, I would like to make a settlement," he said he meant whether there could be a settlement (page 24).

The witness had no occasion to call the matter to his attention again until June, 1913. Witness McKelway was shown a letter dated July 19, 1913, written by him to the president of the Second National Bank, in which he said he enclosed a copy of a letter of the manager of the Second National Bank, Mr. Phillips, dated June 17, 1913, "who is the same person I had the dealings with at the Second National Bank," and was asked to explain the reference to Mr. Phillips, who had previously been cashier of the Second National Bank and who had signed the letter of the Union Trust & Savings Bank dated June 17, 1913, to witness, and witness replied that Mr. Phillips was the man who was with Steadman, but when witness went to tender the money in June, 1913, he did not recognize Phillips.

Witness was then asked (page 25) whether at the time this cause was called for preliminary hearing in October,

1913, he had stated in the court room and offered to testify if necessary that he had made the agreement set forth in the bill of complaint relative to the holding of the Brown note as collateral security to the Gross note, and allowing the interest on one to pay the interest and prineipal on the other, with Mr. Phillips. Witness replied, "No, sir, not to Mr. Phillips. My bill was filed in the case and I think you will see it was otherwise there (page 25)." Witness was then asked to point to any place in the bill where the agreement was alleged to have been made by Steadman and he stated that he had not alleged the name of any person in the bill with whom the agreement was made, *and that he had purposely left it out of the bill.* Witness was asked if he did not say in the court room at the time of the preliminary hearing that the agreement had been made by Phillips, and he said "no."

In response to the question if he had told any one representing the defendant at any time before witness' testimony was given in the court room on the day of the trial that the agreement had been made with Steadman, witness said that he did not know whether he had said that to any one, but it was always his understanding that Steadman had made the agreement (page 26). When he was asked if he had stated to the counsel in the case or to the president of the Union Trust & Savings Bank that the agreement had been made with Steadman, he said that he was unable to say whether or not he did, but he did not remember if he had. The letter of July 19, 1913, was offered in evidence by the defense.

Witness Steadman (page 30) testified that he had never, until the time McKelway stated in his opening statement in court on the day of the trial, heard McKelway say that any arrangement had been made with Steadman, and said that he had not made any such arrangement with McKelway; that witness had understood from several parties that McKelway had always stated he had made the alleged agreement with Phillips. Phillips testified (page 36) that when McKelway came to the bank in 1913, he was with another person who was

not called in the case by the complainant, to make the tender to take up the Brown note, after the bank had declined to give it to the complainant. McKelway stated to the witness, Phillips, that the witness, Phillips, had made the arrangements with McKelway to carry this Gross matter along. Phillips told McKelway that he did not remember ever seeing him before; that McKelway had never made any such agreement with him and that Phillips had never heard of any such agreement. That Phillips had never heard McKelway state he had made the agreement with Steadman prior to the time McKelway made his opening statement in the court on the day of his testimony.

Leon Shaw, a witness on behalf of the defendant, testified that he was in the employ of defendant's counsel and was present at the hearing in October, 1913, on return to the restraining order for preliminary injunction; that McKelway at that time stated in court that he had made the agreement about the Brown note being held and the interest paying off the principal and interest on the Gross note with Phillips. Witness did not hear Steadman's name mentioned at that time.

ARGUMENT

I

THE JURISDICTION OF EQUITY

It is respectfully submitted that the case at bar is an attempt by the complainant to make a possessory action at law an equity proceeding. The result has been that the defendant, which would be entitled at law to have a jury pass upon the disputed questions of fact, has been deprived of that trial and in place of that jury trial the questions of fact have been submitted to a chancellor who the courts have said is removed from the affairs of life and consequently not so capable of judging the ordinary affairs of human beings.

Upon one side of the controversy there is a member of the bar who attempts to contradict every writing in the case. The note gave the bank the absolute right to sell without notice to the borrower. He attempts to contradict that by saying

there was an agreement subsequent to the written agreement by the borrower of the money by which he was entitled to notice. The bank, notwithstanding the fact it was not compelled to give notice, did give notice by the letter of February 9, and his client tries to contradict the receipt of this notice. The testimony shows in three different instances, namely, to Mr. Phillips in June, 1913, when he made the tender of the money, again in his letter to the president of the Union Trust & Savings Bank, where he said Mr. Phillips made the agreement with him, and again in the court room at the time of the preliminary hearing, he stated that he had made the agreement with Phillips. On the witness stand he stated that the original agreement had been made with Steadman, and at page 25 of the record he said that he had purposely left out of the bill of complaint the party with whom he had made the agreement. At page 26 he said he had told no one connected with the defense until the day of the trial that Steadman had made the agreement. We respectfully submit that to put the decision of a question of that kind to a chancellor, if the law entitled defendant to a trial by jury, was an error.

The decree in this cause was, in substance, a decree for possession. If the Second National Bank wrongfully sold the Brown note, it converted it to its own use and was liable for that conversion; that under the agreement alleged in the bill of complaint between the Second National Bank and the Union Trust & Savings Bank, the latter was liable for the conversion if the former was, but here is a situation wherein there was a conversion of property by it being sold to Phillips, not a party to the suit, who afterwards discounted it, and that discount reaches the Union Trust & Savings Bank, and yet, through the medium of equity, an attempt is made to obtain possession. We respectfully submit that if the Second National Bank converted this property, it was liable in a plain and simple action at law, but that there was no necessity or right to equity jurisdiction. The bringing of the suit in equity had the ef-

fect, if not designedly so, of preventing a jury passing on the differences between the testimony of the complainant's counsel and that adduced by the defendant. The defendant, we submit, was entitled to a trial by jury.

Without setting the same forth at large, for the purpose of confining this brief to reasonable limits, we respectfully invite the attention of the court to the following authorities, which substantially hold in such an action as this the plain, ample and complete remedy of the complainant is an ordinary action at law. This is not a mortgage but a pledge; it is not a trust but a bailment:

Bulkeley vs. Welch, 31 Com., 339.
Roland vs. First National Bank, 135 Penn. St., 598.
Walker vs. Bennett, 63 Mass., 175.
Hayward vs. Elliott National Bank, 96 U. S., 611.
Lacombe vs. Forestall, 123 U. S., 562.
Flowers vs. Sproule (9 Ky.), 509.
Jones on Collateral Securities, Sec. 431.
Taylor vs. Turner, 87 Ill., 302.
Glidden vs. Merchants Nat. Bk., 53 Ohio St., 588.

In the Supreme Court cases cited, the doctrine, while not applied in name, was applied in substance.

We have refrained from citing these cases at large, but respectfully submit each held in substance that under the facts as sought to be found by the complainant the action was one for conversion, or in the event they desired to obtain the possession of the property, of replevin. There is nothing exceptional in the nature of the property sought, as an heirloom or the like, that would give equity jurisdiction for an action of possession, as in the case of Rozer vs. May, 41 Washington Law Reporter, 121.

Glidden

Bulkeley & Welch, Conn

Roland & Mystic

Bennett

Hayward & Elliott

Rozer & May

Lacombe & Forestall

Flowers & Sproule

II

THE CONSIDERATION FOR THE AGREEMENT

It is respectfully submitted that if the court finds adversely to the contention of the defendant that there was no jurisdiction in equity, under the facts as developed by the complainant, still the court should not find for the complainant.

The contract alleged by McKelway to have been made with Steadman that the interest on the Brown note would be allowed to pay out the principal and interest on the Gross note was without any consideration. Nothing passed to the Second National Bank that it did not already have, and there was no detriment to the complainant. The Second National Bank already had the right to foreclose the collateral at its choice; the note had been in the bank from May to October, 1909, as a demand note; the Brown note did not mature until 1914, and yet, without any consideration alleged, they claim the bank made the contract to allow a demand note, put in the bank in 1909, to remain there until 1914. We respectfully submit, in order to sustain such a position, they must show some consideration for it.

III

THE FACTS

We have somewhat reviewed the facts in this case, and consequently we will try to condense what we have to say here in addition.

We respectfully submit to the court that in order to sustain a proposition of the kind submitted by the complainant, the testimony should be unusually strong, owing to its improbability. When Mr. McKelway went to the bank in October, 1909, he took with him a check of Mr. Brown's for part of the interest, but he did not apply that check on the Gross note, although he claims at that time he made the agreement to do so. He applied it upon one of Mrs. Gross' obligations, and yet he claims to have made an agreement at that time that he should be permitted to allow the interest on the Brown note to apply on the Gross indebtedness. It will be remembered that in 1909 Gross had died; the bank knew

II.

III.

he was dead; it held as collateral the real estate note on country property due in five years secured by second trust, the first trust being for three thousand dollars. The Brown note was not due for five years. Do you think that bank officials, knowing this fact, would have extended a note for five years originally brought into the bank and held as a commercial proposition? Do bank officials usually do such things? The interest upon the Brown note, if all of it had been applied to the Gross note, would only have decreased it a very small proportion. The note was not held as a real estate note but as a commercial proposition, subject to the criticism of the Treasury Department as such, and the facts themselves, we respectfully submit, show that any banking official would have been slow to make any such agreement about the extension of the loan for five years to come. The very best proof that it was not a trick to deliberately sell the security is that it remained in the bank until 1912, as, if the promise had been made deliberately, with the intention of breaking it, the collateral would have been sold shortly afterward.

We again respectfully call the court's attention to the fact that McKelway wrote to the Second National Bank in May, 1911, and used these words, "if possible, I would like to make a settlement of this matter so as to get the proceeds of the note of Harry L. Brown, or so much thereof as may belong to the estate of the deceased, in order that the administratrix may close her accounts. A prompt reply will be much appreciated." He had a reply under date of May 26 giving the information. Witness McKelway attempts to explain this reference. He further states that after the bank answered in May, 1911, witness had no occasion to have his attention called to the matter until June, 1913. In other words, we submit, that there is an improbability in that state of facts; he said in 1911 he wanted to close the account and asked for a prompt reply so that the administratrix might close the estate, and he got a prompt reply; he did not have occasion again to think

about the matter that he wanted to do immediately and promptly, that is, make a settlement and close the estate, until 1913. We respectfully submit that it is improbable that such could have been the case. The bank waited until 1912 before it closed this item, and then did so after notifying Mrs. Gross, sending her a letter in February after the witness Steadman had tried to get into communication with McKelway over the telephone. The notice was not required under the contract with Gross, or under the law, but the defendant, out of abundant precaution, tried to give it. The bank did not desire to sell the collateral. Now the witness McKelway, when he comes to make his statement in court and to present his case by testimony, knowing the vulnerable part of the defense and that the defendant had been misled, perhaps unintentionally, was not willing to place it where he had three times placed it before, with Phillips, but says that he made his contract with Steadman, changing the whole course of both his correspondence and his verbal statements. This fact, if such it was, he had never told before to a single individual, not even to Steadman, before the day he went on the witness stand.

We respectfully submit that the witness McKelway, when he admits, on page 24, that his recollection of the matter was not very clear, and that he then had his mind on a great many matters in reference to the Gross estate, is admitting what is the fact, as we have submitted to the court, that he was mistaken about this proposition, and that the complainant has not borne the burden of proof.

We therefore respectfully submit that if the court agrees with us in any one of the three propositions, the decree should be reversed and the bill of complaint dismissed.

If equity has no jurisdiction in this matter, we respectfully submit, that would end it. If there was no consideration for the contract, that would likewise end the case. We respectfully submit that a consideration of the facts will convince this honorable court that the complainant's case is built upon a supposed contract about which one witness is mistaken, in

trying to impeach every writing in the case and all other witnesses.

We respectfully submit that the decree below should be reversed.

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Solicitor for Appellant.

In the Court of Appeals, District of Columbia.

Union Trust and Savings Bank, a corporation Appellant, vs. Mary A. Gross, administratrix of the estate of James L. Gross, deceased, Appellee.	BRIEF FOR APPELLEE

While we agree with the appellant's brief that "the principal facts of the case are developed by two witnesses, one upon each side, and the surrounding circumstances of their testimony," we do not think that its "Statement of Facts" is "sufficiently full and complete" (Sec. 4. Rule VIII., Ct. App., D. C.).

STATEMENT OF FACTS

On May 19, 1909, one James L. Gross executed as maker and delivered to the Second National Bank his collateral note for $216, payable "on demand," depositing with said bank as collateral security therefor the note of one Harry L. Brown for $695, payable five years after date, with interest at five per cent., interest payable semi-annually, secured by mortgage on real estate in Prince George's County, Maryland (Rec. 28-30). By the terms of this collateral note the Brown note was "security for payment of this or any other liability or liabilities to said bank, due or to become due, or that may hereafter be contracted." James L. Gross died suddenly on August 11, 1909, and his wife, Mary A. Gross, was appointed administratrix by the court in Prince George's County (Rec. 19), and as such administratrix was the complainant below and appellee here.

At the time of his death, James L. Gross was indebted to said bank, either as maker or endorser, in the sum of $471 (Rec. 2, 19, 21) as follows:

As endorser on note of Robert L. Corwin, for.....	$80	due Sept. 28, 1909
As endorser on note of Mary A. Gross, for.....	$60	due Aug. 15, 1909
As endorser on note of Mary A. Gross, for.....	$55	due Aug. 15, 1909
As endorser on note of Robert L. Corwin, for.....	$75	due Sept. 28, 1909
As maker on balance (Rec. 2, 28) of the collateral note about	$201	due on demand.
	$471	

Soon after the death of James L. Gross, Corwin paid his note for $80 (Rec. 2, 21); and on August 15, 1909, Mrs. Gross personally paid the $60 note on which she was an accommodation maker (Rec. 3, 21); and on the same date she took up the $55 note, on which she was also an accommodation maker, by giving said bank a renewal note for the same amount, due October 16, 1909 (Rec. 3, 21). This last note is marked "Paid October 27, 1909" (Rec. 19), the date when the appellee's attorney, D. W. McKelway, went to said bank and had a conversation with Mr. Thomas Steadman, the then president of the bank, during the course of which they discussed that *Mrs. Gross was not liable as accommodation endorser or maker on her husband's note* (Rec. 21). As a result of this conversation, the president of said bank agreed that said bank would waive its right to sell the Brown note, and would let Mr. Gross' indebtedness be taken care of by the Brown interest being credited on the interest and principal of Mr. Gross' indebtedness, provided Mrs. Gross took up the renewal note for

$55; and he accepted in payment of this $55 note an interest check of Brown for $20 which Mrs. Gross had received from Brown (Rec. 20), and *Mrs. Gross' personal check* for $36, making a total of $56 for the note, interest and protest fees thereon (Rec. 19, 21). The attorney had brought with him to the bank both of said checks and delivered them to Steadman on said agreement that said bank would let the Gross indebtedness be taken care of by the Brown future interest payments until the Brown principal was paid and wiped out all the Gross indebtedness. Steadman accepted the two checks on that understanding and made a memorandum in his own handwriting on the book of said bank, showing the payment of the note on which Mrs. Gross was an accommodation party, paid as follows: "Check of Mary A. Gross $36, check of Harry L. Brown $20" (Rec. 29). Relying on this arrangement, McKelway had no further communication with said bank until May 24, 1911, when he wrote the bank requesting a statement of the Gross account of the administratrix (Rec. 22). He received a reply stating: "Yours of the 24th inst. at hand. In reply beg to state that at the present time the indebtedness of James L. Gross to this bank is $244. We hold as collateral for said indebtedness note of Harry L. Brown for $695, which we understand is secured on lot next to house of Mr. Brown. The Brown note is dated March 22d, 1909, for five years, with interest at 6 per cent, payable semi-annually. The interest is paid to March 22, 1911."

This letter, signed by W. T. Phillips, Cashier, showed that the interest payments by Brown had reduced the Gross indebtedness to $244, and that the matter was being taken care of in accordance with his understanding with said bank. Hence, "he did nothing further in regard to the matter until the spring of 1913, when a Mr. Stephens, who represented the

Stephens

Brown estate, came to see him in reference to settling the Brown note before it was due" (Rec. 22). In the meantime the said bank had been absorbed by, or consolidated with, the Union Trust and Savings Bank (Rec. 35, 36), and McKelway wrote the Union Trust & Savings Bank inquiring "what balance, if any, is still due on the note of James L. Gross, deceased, held by your bank, for which said note you hold as collateral security the note of Harry L. Brown for $695, and on which latter note you have collected the interest." He received a reply from the Union Trust and Savings Bank stating that "we hold no collateral note of James L. Gross as maker on which the collateral is a note of Harry L. Brown for $695. We do hold, however, among our real estate notes, a note of Harry L. Brown for $695, which is not due until March 22, 1914."

He replied the following day to this letter (Rec. 23), calling the Union Trust and Savings Bank's attention to the fact that "It was understood that the bank should continue to collect on the note and credit such collections on the indebtedness of James L. Gross until the same was paid."

There was some further correspondence, and then McKelway called in person at the Fourteenth Street Branch of the Union Trust and Savings Bank and made a tender (Rec. 24) of $245.00 to take up the balance of the Gross indebtedness and to thus redeem the collateral, the Brown note. This tender was refused, and the Union Trust and Savings Bank, having refused to make proper settlement of the matter, appellee filed her bill of complaint on September 26, 1913, against both the Union Trust and Savings Bank and The Second National Bank, alleging in full the foregoing facts and praying that the Union Trust and Savings Bank be directed to surrender to appellee the Brown note upon the payment by appellee of the balance of the Gross indebtedness; that both defendants be made to *account;* that both defendants be *restrained* from causing the Brown real estate to be foreclosed; that both defendants be required *to discover* the terms of their consolidation; and for general relief.

The Union Trust and Savings Bank filed its answer, *under oath,* denying all the material allegations of the bill of complaint and alleging (Rec. 9) that "prior to the purchase of the assets of said Second National Bank by this defendant" the bank had sold the Brown note for a sum "sufficient to pay the indebtedness" of the Gross estate, which amounted at that time to $230 (Rec. 36). It developed in the testimony (Rec. 37) that the purchaser was W. T. Phillips, who "was at the time the cashier of the bank" and the "only bidder on the note" (Rec. 37).

The answer further alleged that the Brown note "was subsequently discounted in the assets of said Second National Bank and endorsed to this defendant for value before maturity (Rec. 10, 12), and that the Union Trust and Savings Bank "owns said note, having purchased same for value before maturity and without notice of defense thereto" (Rec. 11).

Nowhere in the answer is there any language that could possibly be construed as demurring to the Court's jurisdiction.

The other defendant, the Second National Bank, did not file an answer, and there was a decree *pro confesso* against it, which was made final (Rec. 16).

Issue was joined, and the witnesses gave their testimony in the presence of the presiding Justice, and at the hearing, counsel for the Union Trust and Savings Bank stated that rather than produce the records of the two defendants, required by *subpœna duces tecum,* which would show the real transaction of the taking over of the bank by the Union Trust and Savings Bank, he would admit that the Union Trust and Savings Bank took the note or notes in question, subject to all the equities and liabilities attending them in the hands of the bank. This admission was made, notwithstanding the previous sworn denial of the Union Trust and Savings Bank that it assumed all liabilities of the Said Second National Bank (Rec. 10), and is noted in appellant's brief, as follows:

> "Counsel for the Union Trust and Savings Bank admitted, for the purpose of this suit, that under the agreement between the Union Trust and Savings Bank and the Second National Bank, if there had been any liability of the Second National Bank, the Union Trust and Savings Bank was liable for it."

The decree recognized this admission in the following language (Rec. 16):

> "The admission of the defendant, the Union Trust and Savings Bank, for the purposes of this suit, to assume any and all liability that might be proved or established against its co-defendant, the Second National Bank, said admission being made in open court at the final hearing of this cause."

The hearing, showing that the bank sold the Brown note for $230 (Rec. 37) to its own cashier, who was the only bidder and who immediately resold the note for its face value, $695, "and put the balance into his own pocket," resulted in the decree set forth on page 16 of the record; and only one defendant, the Union Trust and Savings Bank, prosecuted its appeal to this Court.

ARGUMENT ON FIRST ASSIGNMENT OF ERROR

Appellant's first assignment of error is that the facts brought out by the testimony on behalf of the appellee do not constitute ground for equitable relief.

At the outset we wish to call your Honor's attention that no demurrer was interposed to the bill of complaint in the lower court, not the slightest objection in the pleadings or in open court was made to the jurisdiction of the equity court until at the close of counsel's argument, when the Justice intimated he would sign a decree for the appellee, and then, for the first time, appellant raised the question. Appellant filed an answer to the bill of complaint, and not a word anywhere in its answer can be construed as demurring to the bill. It went into the trial of the cause, cross-examined the appellee's witnesses, produced witnesses in its own behalf, argued the case after appellee submitted her case without argument, and then, for the first time, when the presiding Justice ruled for the appellee, orally questioned the court's jurisdiction. It did not then, and even now does not, under this assignment, make the specific objection that the facts alleged in appellee's bill of complaint do not bring the action within the equity court's jurisdiction, but assigns as error that *the testimony* adduced by appellee in support of the allegations of her bill of complaint is not such that equity can grant relief in the

premises. That the facts established by the testimony are identical with all the essential allegations of the bill of complaint, does not change the aspect of this assignment. It seems to us as though this appellant, having neglected to file in proper form a demurrer to the bill of complaint at the proper time, now wishes by the subterfuge of the wording of this assignment of error to have this court allow it to interpose an objection that for all practical purposes is a tardy demurrer to the bill filed at the close of final argument in the cause.

We are aware of the Equity Rule Number 32 of the lower court abolishing formal demurrers, but our understanding of that rule, considered with Rule No. 33, is that it does not change *the time* of objection to the court's jurisdiction. Our understanding is that, if the defendant wishes to raise the jurisdictional question, he must do so by a "motion to dismiss" and have the court dispose of the motion before filing an answer in the cause and entering into trial on the merits.

But, treating this assignment of error, either as a demurrer to the court's jurisdiction on account of the evidence, or as a motion to dismiss the bill of complaint for want of equity, we respectfully submit the objection comes too late. When appellant answered and went into the trial of the cause, without interposing a motion to dismiss, it waived any question of the court's jurisdiction, and must now abide by its waiver.

This general rule is so well established, and has been so often laid down by this and other courts, that we think it is only necessary for us to state the rule in the language of this court in the case of *Tyler v. Moses,* 13 App. D. C., 428, 443, which cited *Raynes v. Dumont,* 130 U. S., 354, 395, and said:

> "In that case it was said by the Chief Justice that: 'The rule as stated in 1 *Daniel's Chancery Practise,* 555, is that if the objection of want of jurisdiction in equity is not taken in proper time, namely, before the defendant enters into his defense at large, the court having general

> jurisdiction, will exercise it; and in a note on page 550, many cases are cited to establish that, if a defendant in a suit of equity answers and submits to the jurisdiction of the court, it is too late for him to object that the plaintiff has a plain and adequate remedy at law. This objection should be taken at the earliest opportunity.' ''

Assuming, however, for the purposes of argument, that appellant had actually and seasonably raised the jurisdictional question by a motion to dismiss the bill of complaint, would its objection have been well taken? We answer, no. Do the eleven cases cited by appellant's counsel on page 10 of their brief support their contention? Again, we answer, no.

We note counsel state they have "refrained from citing these cases at large." Is this restraint due to the fact that consideration and analysis of these eleven cases discloses that many of them are not applicable to the facts in the case at bar, and that the pertinent cases lean strongly to our view? We think so, and to show the reason for our belief we will now take up and discuss these eleven cases, one by one, in the order cited.

In the cose of *Buckley v. Welch,* 31 Conn., 339 (erroneously cited by appellant as 31 Com.), the complainant deposited with a savings association stocks and bonds as collateral for promissory notes due the association, which thereafter sold the collateral and sued the complainant at law on the notes. The latter then filed his bill in equity asking the court to

> "order an application of the damages occasioned to him by the conversion and misappropriation of said securities * * * in liquidation, offset and answer to the claims of said trustees on said notes in suit, and to enjoin said trustees against the prosecution of said action."

The court held that the whole transaction was already being litigated in the law court, and said:

> "So far as we can ascertain from the bill, the petitioner has an adequate remedy for the protection and vindication of his rights in the action at law now pending in

court. The petitioner does not ask for either a discovery or an account."

In *Roland v. Bank,* 135 Pa. St., 598, one Boffemyer executed to the bank his note for $1,000, and deposited at the same time with the bank, as collateral security, ten shares of stock. The evidence established that the stock had a market value of $124 per share in the open market, and that it was sold at that price, and that the proceeds of sale, over and above the amount required to pay the $1,000 note, were applied in part payment of an overdue and protected note of $315 held by the bank, on which Boffemyer was an endorser. The complainant's bill was to compel the defendant to surrender the ten shares of stock, or a like number of shares, on the payment of the $1,000 note, but the court held there was no ground for equitable relief, as the testimony showed that the stock had a known market value and that it was sold for that market value. There was no question of fraud, inadequate price, discovery or accounting involved.

Mather v. Bennett, 9 Cushing, 175, (Mass. 1849). The facts are not similar, and the case is so meagerly reported that it is difficult to see the precise ground upon which the conclusion of the court was based.

In *Hayward v. Bank,* 96 U. S., 611, the collateral was worth $70 per share at the time of the sale, but it was bought in by the bank officials at $87 to protect the bank, and the complainant waited for four years, with knowledge of the sale, before filing suit to upset the sale. The Court, while holding there was no ground for equitable relief, as complainant had suffered no loss, dismissed complainant's bill on the ground that

"He must be held to have waived and abandoned the right, if any he had, to impeach the transaction."

The facts in the case of *Larcombe v. Forestall,* 123 U. S.,

Forestall

Larcombe

Mather

Roland

Boffemyer

Hayward

562, are not similar because there were two sales of the collateral and the case turned on the second sale, and in regard to the second sale there was no tender to redeem, the collateral sold for their fair market value, and there was no allegation of fraud or unfairness in the sales of the collateral, the court saying, "No attempt is made to impeach the fairness of these sales." The evidence showed that the bonds (the collateral) were sold by the defendants and bought in by them at the same time. Then after this pretended sale, there were negotiations and even a suit between the parties, in consequence of which the complainants (the pledgors) endorsed the bonds for the purpose of having them sold by the defendants, and the bonds were then sold at various times to strangers. The complainants then asked the equity court to set aside both sales and to compel defendants to surrender the collateral to the complainants. The court held there was no ground for equitable relief, as complainants' remedy, if any, was at law. It will be noticed, however, the court used the following language in referring to the first sale (p. 567):

> "As to the question of intentional fraud in the first sale of the bonds, it is repelled by the testimony of the members of the firm of Forestall's Sons, and yet the transaction is one which it might be difficult to sustain in a court of equity. We do not feel, however, called upon, in view of the other facts in the case, to decide this question.
>
> "If the complainants had chosen to stand upon their rights, or the rights of the bank, growing out of the fraud in the first sale, it may be well to consider what course they should have pursued."

This language far from supports appellant's contention. In fact, it can be read as a strong intimation that the pledgors could have maintained a bill in equity arising out of the first transaction if they had not waived their rights to do so by their conduct in the second transaction. After holding there was a waiver of complainants' right to sue on the first sale, the court ruled that the complainants had no standing in equity because they had consented to this second sale, and that their remedy, in reference to the proceeds of the second sale, was at law.

Flowers v. Sproule, 2 Marsh (Ky. 1819), 509, is not pertinent to the case at bar, as the property in dispute was not negotiable paper but slaves, and the case was not on the question whether a pledgor can maintain suit in equity against a pledgee, as the court held that the slaves had not been mortgaged nor pledged, but that they had been conditionally sold.

Section 431 (cited by appellant) of *Jones on Collateral Securities,* is in full as follows:

> "A bill in equity will not lie by a pledgee against one entrusted with property for the purpose of selling it, upon his refusal to pay over the proceeds to the pledgee; for there is a complete remedy by an action at law for money had and received."

We fail to perceive how this section is in point, as it deals with actions brought by the *pledgee* after parting with the pledge, and the instant case was brought by a *pledgor.* The author, however, is authority for the doctrine that a bill in equity will lie by a pledgor against a pledgee.

Taylor v. Turner, 87 Ill., 296, is not in point, as it was a case of grain being delivered to a commission merchant to be sold; and there was no question of relation of pledgor and pledgee involved.

Appellant's brief does not cite the volume number of *CYC,* but we take it to mean Vol. 31 on the subject of "Pledges." The pages cited by appellant discuss the rights of pledgors to maintain actions at law against pledgees, but do not say that they cannot also maintain suits in equity.

Glidden v. Bank, 53 Ohio St., 588, was an *action at law.* The bank sued Glidden for a balance due on his note after deducting from the face of the note the sum realized by the sale by the bank of some iron pledged to the bank by Glidden as collateral for his note.

The case of *Rozer v. May,* 41 Wash., 121, is not in point

as it does not touch at all on the question of pledges or collateral, but simply holds that equity will take jurisdiction to enable the proper parties to recover possession of family portraits. Nowhere does it rule or intimate one way or the other as to the right of a pledgor to maintain an equity suit against the pledgee.

Having disposed of all appellant's cited cases, we will now review a few of the many authorities, showing that in the case at bar the appellee can undoubtedly maintain her bill in equity against the pledgee. In this connection, it must be borne in mind that the complainant has not only asked for the surrender of the pledge, after making the proper tender to pay the collateral note, but prays for *an accounting, injunction, discovery,* and *general relief.* An action at law would not have afforded her such a complete remedy, and where equity can grant a more complete remedy than can be had at law, it will take jurisdiction. As was said in the recent case of *Lyon v. Russell,* 41 App. D. C., 554:

> "Some question is also made as to the right of the appellee to be heard in a court of equity, although no such question was raised below. It is apparent, we think, from the statement of the case, that a more complete remedy can be had in equity than at law, and hence this point was not well taken."

Hart v. Ten Eyck, 2 Johns. Ch., states:

> "A bill in chancery to redeem stock, bonds, plate, or other securities, or personal property, pledged for the payment of debts, has frequently been sustained."

Merrill v. Houghton, 51 N. H, 61:

> "A bill in equity is an appropriate remedy to establish a right to a return of the securities or to compensation."

Bryson v. Raynor, 25 Md., 424:

Bryson & Raynor

Hart & Ten Eyck

Merrill & Houghton

"But he contends, through his counsel, that if the appellant is aggrieved his remedy was ample at law, and that equity can afford him no relief. This position is based upon the technical distinction between a *mortgage* and a *pledge,* it being conceded that if the stock had been mortgaged the right to redeem in equity would be indisputable, but as the relation between bailor and bailee is a legal relation, and only a qualified property passed to the bailee by the transfer of the stock to him, the remedy for any violation of the contract or tortious dealing with the property is, at law, by an action of *trover* or *assumpsit;* and the learned Judge below, adopting this view, and considering that there was nothing in the case that could properly work a change of the jurisdiction, dismissed the bill of the complainant on this ground. In this, we think, he committed an error, and that the complainant was entitled to the relief sought as to the ten shares of stock. * * * *Equity alone, in such a case, can afford relief.*"

This precise question under discussion has previously been before this Court in the case of *Bank v. Construction Co.,* 17 App. D. C., 524:

"The suit is for discovery and an accounting, and for the cancellation and surrender of the notes. It does not appear that the appellee knew precisely what amount of money was received on the certificates. * * * On the theory that the certificates were still in pledge until the date of payment, and that there had been no valid sale of them to anyone, the complainant was plainly entitled to a discovery and accounting; and this could properly be had through a court of equity."

Moreover, appellant's contention that appellee's action "should have been one at law for the conversion of the property" loses sight of the fact that

"so long as the Trust Company (the pledgee), after its invalid sale and purchase of the bonds (the pledge), retained both the note and bonds in its own possession, and was in a position to have surrendered the bonds to the Hardwood Company (the pledgor) or its sureties, upon

tender of payment of the note, although claiming to hold the bonds as purchaser, there was, under the authorities, no wrongful appropriation of the bonds which could have been treated by the Hardwood Company as a conversion." 214 Fed., 673, decided June, 1914.

ARGUMENT ON SECOND ASSIGNMENT OF ERROR

Before establishing the fact that there was a valuable consideration for the agreement or understanding between the bank and appellee's counsel, let us see how the lack of consideration would affect that understanding, because we maintain that, if the testimony establishes that there was such an understanding or agreement, it is immaterial whether there was or was not any consideration for it. And in this aspect of the case, let us not be confused by phraseology or legal definitions, because "contract," "agreement" or "understanding," in their strict legal sense, necessarily imply a supporting consideration. But here, when we speak of an "agreement" or "understanding," we mean an arrangement between the parties that the bank would waive its right to dispose of the collateral security; that is, a waiver by the bank of the right of forfeiture. Now, keeping in mind this distinction between a waiver and an agreement, the second assignment of error falls to the ground without a single case cited to support it. And in this connection, let us keep in mind the beneficent policy of the courts to always rule for a waiver of forfeiture whenever possible. It was said by Mr. Justice Bradley, in *Insurance Co. v. Eggleson*, 96 U. S., 577, "Forfeitures are not favored in the law"; and the "courts are always prompt to seize hold of any circumstances that indicate an election to waive a forfeiture, or agreement to do so, on which the party has relied and acted." And that such a waiver needs no consideration to make it binding on the party waiving when the other party has relied and acted on the waiver, is clearly established in the following cases:

In *Bailey v. Loan Co.,* 65, N. Y. Supp., 330 (affirmed in 165 N. Y., 672), the court quoted with approval *Toplitz v. Bauer,* 161 N. Y., 325, as follows:

> "The pledgee doubtless has the right to exact strict performance of the contract according to its terms, and upon default in payment of the debt at the time stipulated he may, under a contract like this, dispose of the pledge. But if he waives the right to exact strict performance, and gives time and indulgence to the debtor, he cannot recall this waiver, at his option, without notice to the pledgor, to the end that the latter may have an opportunity of protecting the pledge. The good faith which the law exacts from a person dealing with trust property will not permit the pledgee, after having once waived the forfeiture or the right to dispose of the pledge upon default of payment at the prescribed time, to suddenly stop and insist upon the forfeiture for the non-payment of the debt, when the party is unprepared to redeem."

And in *Toplitz v. Bauer, supra,* it was also said:

> "It must be conceded at the outset that no legal extension of the time for the payment of the note was given, for the reason that the promise in that respect was not supported by a sufficient consideration. * * * But the extension of the time for the payment of a debt, which must be supported by a sufficient consideration, must not be confused with a waiver of the right to forfeit the pledge without previous notice to the pledgor *or those who represent him,* or were interested in the pledge."

In *Wyckoff v. Bank,* 119 N. Y. Supp., 937, the Court held:

> "Such a contract is of such class that the right to sell the security for the payment of the debt may be waived by the mere extension of the time without any new or independent consideration, and also by the conduct of the parties."

The language of the Court in *Moses v. Grainger,* 106 Tenn., 7, is:

"The acceptance of payments from the maker of the original note at different times after maturity and the indulgence given to him for nearly four years lulled him into a sense of security. He had a right to suppose that under these circumstances, and after his note had been reduced to a trifling balance, that before exercising the right to sell, a demand would be made upon him to redeem his collateral * * * The power of sale must be exercised with a view to the interest of the pledgor as well as of the pledgee, and the sale must not be forced for barely enough money to secure the payment of the debt. * * * We think the sale complained of was in disregard of these equitable principles, and if it had been made at the instance of the original holder, would not have been tolerated by a court of conscience."

Leaving the waiver aspect of this assignment of error, we will now meet appellant squarely on the contention that there was a valuable consideration for the agreement, for, as was said in *Wyckoff v. Bank, supra,* "If the right to sell the collateral security can be waived by mere agreement without consideration, it surely can be waived by a new and independent contract founded upon valuable consideration."

Let us see what constituted the consideration in the case at bar. At the time of her husband's death, the bank held, among others, a note for $55, for which appellee was an accommodation maker for her husband, James L. Gross, who was the endorser thereof. Mrs. Gross was, of course, *a married woman* when she signed the note for her husband. She was under no legal liability to make any payment to the bank, out of her own funds, on this note. She was not liable to the bank on the note, and yet, shortly after her husband's death, without being advised as to her non-liability in the premises, she took up this note by giving, as maker, a renewal note for the same amount, on which she was not liable to the bank, as she was still *an accommodation* party, having received no consideration therefor. It is in the testimony (Rec. 21) that

appellee's counsel, after this renewal note was due, in order to settle the entire matter of the Gross notes at the bank, went to the bank with

> "the check for $20 of Mr. Brown, and Mrs. Gross' check for $36, being the same check identified (Rec. 19) by Mrs. Gross, in order to make up the amount of the note which Mrs. Gross had given a few days after the death of her husband to the bank; that the note was for $55 and with interest and protest fees amounted to $56; that this note had been given by Mrs. Gross as a renewal note for a note on which she was the accommodation party; * * * that witness wanted to have the interest on the Brown note credited on Mrs. Gross' note; that the conversation was that she, Mrs. Gross, was not liable as endorser on her husband's note; that witness sought to have the interest on the Brown note applied upon Mrs. Gross' note for $56, and to give Mrs. Gross' check for $36 and thus take up the note; that this was done; * * * that at that time it was understood and agreed between Mr. Steadman and witness that * * * the interest on the Brown note would be credited on the principal and interest of Mr. Gross' indebtedness, and take care of itself until the interest on the Brown note, and if necessary, the principal on the Brown note, would wipe out the indebtedness of Mr. Gross to the bank."

That the $55 renewal note was paid in the manner stated is also shown by the significant entry on the books of the bank (Rec. 29) in the handwriting of Steadman, the then president of the bank, reading "Check of Mary A. Gross, $36. Check of Harry L. Brown $20." That the bank considered this $55 renewal note as part of deceased's liability to the bank protected by the Brown note, rather than a liability due by his wife, is shown by the fact that it permitted the Brown interest to be credited as part payment of the renewal note;

in fact, the president of the bank testified that he "was afraid" the payment "might be confounded" (Rec. 30), and hence he personally made the entry on the book of the bank because he did not want it "confounded with the payment by Mr. Gross or Mrs. Gross" (Rec. 32), as "the bank proposed to collect it right along as long as it was there and credit it upon the indebtedness of Mr. Gross to the bank" (Rec. 33).

Now, since the appellant, after discussing whether Mrs. Gross was liable on that renewal note, accepted her personal check for the balance of $36 of that renewal note, how can appellant, in all fairness, contend there was no consideration for the agreement? From the circumstances surrounding the transaction of this payment, especially that the payment was made by appellee's counsel, with knowledge that Mrs. Gross signed the original note as an accommodation maker and as a married woman, is it reasonable to believe that she voluntarily presented the bank with $36, without receiving some corresponding benefit either to herself or to her husband's estate? She paid $36 and received therefore the promise of extension of time on her husband's indebtedness, and we hardly think it is necessary for us to cite authorities to this court that money constitutes a valuable consideration.

This brings us to the last assignment of error, namely, the existence and nature of the agreement or understanding.

ARGUMENT ON THIRD ASSIGNMENT OF ERROR

First, we would call your Honor's attention to the fact that you are asked, under this assignment, to review the trial court on a finding of fact. Let it be borne in mind that in this case the testimony was not taken before an examiner, but was heard orally in open court, where the presiding justice had the fullest opportunity to observe the conduct and demeanor of the witnesses and their fairness or lack of fairness. He heard all the evidence, questions and answers, of which the printed

record is only a summary. We think, with all due deference to your Honors, that surely the Justice was in a better position to determine the weight of evidence and to pass upon the credibility of the witnesses. In the language of the court in the case of *Calkins v. Worth,* 215 Ill., 78 (equity suit):

> "We think there is evidence sufficient to support the decree. The trial court saw and heard the witnesses and was better capable of judging as to the weight to be given their evidence, and unless the decree is manifestly against the weight of the evidence, the decree will not be disturbed where there is a conflict in the evidence."

And in *Smith v. Anderson,* 8 Tex. Civ. App., 188, which was an equity suit by a pledgor against a pledgee, the Appellate Court said:

> "It was the duty of the trial court to pass upon the credibility of the evidence, determine its value, and conclude what facts were established by it; and when it has done so, such conclusions, if there is evidence to support them, * * * will not be disturbed by this court."

And we understand this to be the rule of this court.

There is, however, sufficient and abundant evidence in the record to justify the trial court in finding the existence of an agreement. The main points of this evidence we have set out in the following four paragraphs:

1. The fact of the payment of a valuable consideration by appellee to appellant, as shown in our argument upon the second assignment of error.
2. The testimony of appellee's counsel (Rec. 21):

> "that at the time it was understood and agreed between Mr. Steadman and witness that, as the indebtedness of Mr. Gross to the bank was of course much less than the Brown note, the interest on the Brown note would be credited on the principal and interest of Mr. Gross' indebtedness, and take care of itself until the interest on the Brown note, and, if necessary, the principal on the Brown note, would wipe out the indebtedness of Mr. Gross to the bank,"

Calkins Dworth

smith

which was corroborated by witness' letter of May 24, 1911 (Rec. 22), and the bank's reply of May 26, 1911 (Rec. 22), and his testimony that "he did nothing further in regard to the matter until the spring of 1913" (Rec. 22), stating:

> "It was understood that the bank should continue to collect on the note and credit said collections on the indebtedness of James L. Gross until the same was paid."

The uncontradicted fact that he, the attorney for the estate, charged with a duty to his client, "*did nothing further in regard to the matter until the spring of 1913,*" cannot be explained except by his reliance on the existence of the agreement. Moreover, his reliance was acquiesced in for two and a half years by the appellant.

3. The witness Steadman on cross-examination testified that after McKelway's visit to the bank on October 27, 1909 (Rec. 19, 24, 33), there was from this date on no payment on the notes for a period of two and a half years (Rec. 33), and that "the interest had been paid regularly on the Brown note" (Rec. 31). There was no evidence adduced that, during this period of time, any demand whatsoever was made on appellee or on her counsel for any payment. That the Brown interest paid to the bank during this time amounted to $83, and was regularly credited on the Gross indebtedness, to the extent of keeping up the interest on the $200 balance of the collateral note and paying the interest and reducing the principal of the Corwin note of $75, can be seen from an inspection of the endorsements (Rec. 30, 31) of the Brown note, the endorsements of the collateral note (Rec. 28), and the balance due (Rec. 36) of $24 on the said Corwin note. This long course of dealing, namely, in crediting the Brown interest on the Gross indebtedness without making any demand on the estate for additional payments, is exactly in accordance with

appellee's contention for the existence of an agreement to that effect, and is also in accordance with the bank's letter of May 26, 1911 (Rec. 22), showing that at that time the indebtedness had been reduced to $244.

4. There is not only no testimony in the record attempting to show that between the date of the agreement, October 27, 1909, and the time of the alleged sale of the collateral in March, 1912, any demand was made on appellee or her counsel for any payments in addition to the Brown payments (Rec. 37), but we do have the admission of the witness Steadman, on cross-examination (Rec. 34, 35), that the notes held by the bank on which Gross was liable (one of them a "demand" note and the other due September 28, 1909) were never probated against the Gross estate. This failure on the part of a bank to probate its claims against the estate of a deceased debtor is a circumstance constituting strong evidence that this bank had agreed to let those claims be wiped out by the Brown payment instead of proceeding against the estate.

CONCLUSION

Much stress has been laid by appellant, in the testimony and in its brief, upon the question whether appellee's counsel stated previously to testifying in the case that he had made the agreement, not with Steadman, as contended in his testimony, but with Phillips. We think the question hardly warrants so much importance being attached to it, as it could easily be that, when McKelway called at the bank on October 27, 1909, he did not know either Steadman or Phillips personally, and his recollection of the matter was that the agreement was made with an official of the bank, and then when he received the bank's letter of May 26, 1911, signed by Phillips as cashier, and the letter of June 17, 1913, signed by the same party as manager of the Fourteenth Street Branch, he naturally retained the same name, Phillips, in his memory, and hence might have stated the agreement had been made with

Phillips. He testified (Rec. 24) that at the time of the tender he "did not know that he had ever seen Mr. Phillips before that occasion to know him." From that time on he knew that Phillips was not the official with whom the agreement had been made, but when he next saw Steadman he easily identified him as the bank official with whom he had made the agreement. This same explanation applies also to the letter (Rec. 25), which was written before his visit to the bank to make the tender, all of which is borne out by the fact that the name of the bank official was "purposely left out of the bill" (Rec. 25).

In regard to the alleged notice (Rec. 29) claimed to have been mailed to appellee by the bank, her positive testimony is "that she did not receive that letter," and "she had no notice of the matter until Mr. McKelway notified her," and "she received a great many letters about her husband's affairs after his death, and paid a great deal of attention in sending all she received immediately to Mr. McKelway," and that she "had never sent a letter similar to that of February 9, 1909 (1912) to her counsel, as she had never received such a letter" (Rec. 20); and appellee's contention is that the "letter of the 17th of June, 1913, was the first notice of any kind whatsoever that was received by this complainant or her attorney."

Appellant introduced testimony tending to show that the notice was written and mailed to appellee, but we will dismiss this testimony with the positive statement of appellee to the effect that she "did not receive that letter," and with the suggestion that the Justice observed and heard the witnesses on both sides and was in a position to determine the credibility of the testimony.

The presiding justice heard all the testimony in the case and, in addition to the question of consideration and the existence of an agreement, there were many other grounds upon which to base his decree.

The fact that, although the bank claimed to have sold the

collateral and with the proceeds of sale to have paid the Gross notes in full, the witness Steadman could give no satisfactory reasons (Rec. 35, 36) why the Gross notes were not marked "Paid," or why they were still held by the bank, or why appellee or her counsel were not notified of this alleged settlement, are circumstances strongly pointing to the existence of the agreement and showing the general equities of the case. This secrecy in such a matter is so at variance with the usual course of banking business that it would seem that the bank was endeavoring to hide—to cover up—the transaction which it knew was in violation of the existing agreement. And, in this connection, let it be noted that the witness Phillips, the so-called purchaser, who, "at the time was cashier of the bank," and the "only bidder" (Rec. 37), made the significant admission that the bank "was getting ready to sell out," and that he discounted the note for its face value, $695, and "put the balance in his own pocket" (Rec. 37). That admission that the "bank was getting ready to sell out," taken with the secrecy thrown around the questionable transaction, makes the actions of Steadman and Phillips at that time appear as though they were endeavoring to hide the so-called sale from appellee until the Union Trust and Savings Bank took over the assets of the bank, and then Steadman could say "The Second National Bank does not exist, its charter having been surrendered" (Rec. 15), and Phillips could say that " in the due and usual course of business, for value and before maturity, said note was endorsed to" the Union Trust and Savings Bank (Rec. 14).

Appellee might have been put to considerable difficulty in establishing the real nature of the transaction by which the Union Trust and Savings Bank took over the bank, and in refuting any defense of the Union Trust and Savings Bank that it was "a *bona fide* holder and owner for value, before maturity, and without notice" (Rec. 10), if the Union Trust and Savings Bank had not abandoned that defense rather than produce its books in open court and show the real nature of the consolidation.

Viewing all this, a court of conscience may readily hold that the transaction, with its attendant and consequent circumstances, whereby the bank permitted one of its officials at a sale wherein he was the only bidder to purchase the collateral for $230, and immediately transfer it to the bank for its face value, $695, and to "put the balance in his own pocket," was of so shocking a character that a court of equity would declare it null and void, as being in derogation of the rights of the pledgor, and, therefore, it would grant the relief prayed for, without passing upon the question of the existence of the agreement and its consideration.

Further, there is sufficient evidence in the record for the Justice to have held, without passing upon the question of consideration, that the conduct of the bank, dealing with the Gross indebtedness as it did for a period of two and a half years, constituted a waiver of forfeiture and, therefore, the sale would not be tolerated by equity. Or, the trial court could well hold that the alleged transfer by the bank to Phillips and then by Phillips back to the bank was not a *bona fide* sale, but "colorable merely" and an "absolute nullity."

We know of no better way to sum up this case than in the language used by the Justice in rendering his decision from the bench immediately on the close of the hearing in the lower court:

> "I think enough has been shown in this case so that the Court is bound to understand and believe that there was an understanding and arrangement between the bank and Mr. McKelway, at least to this extent, that the note should be treated as being taken care of by the larger note and the payment of interest thereon, until some actual notice was given to Mr. McKelway. I think that is the only understanding that can be derived from these circumstances. How easy it would have been for the bank to have called up Mr. McKelway and said, "We sent a formal notice to Mrs. Gross, but we have not had a reply, and we are afraid that she may not have received it." Here was a little note for $204 and $24 on another note, and here was a big collateral note for $695, which turns out to have been good—every dollar of it—and at that time, if they had cared to look into it, they could

have found it was good. What would just and fair dealing have prompted the bank to have done in those circumstances? To have sent a formal notice and have sold the note and keep the proceeds, or let the cashier do it, or to take one moment and telephone Mr. McKelway? They knew, if they ever gave a moment's thought to it, that the estate would not want to sacrifice that note. They knew that it would be paid if actual notice was ever brought home to them, and they must have known, as honest and reasonable men, that they had not received any notice that there was to be a sale of it. I do not see how anybody who has listened to this testimony can be in doubt about that. That is what makes the case look like sharp practise. I know how easy it is to get behind the formal notice and the terms and conditions of the collateral note, and all of that. But I am talking now as man to man. How would any one of you have felt had you been in the position of Mr. McKelway and this note had been held there, three times as large as the note it was to secure, and perfectly good, with a mere formal notice issued like this to a woman, and no reply coming, and you could have been notified by 'phone? I do not know just exactly what occurred between Mr. McKelway and the parties at the bank. It turns out that there is no doubt Mr. Steadman was right there, either when the talk was going on, or immediately thereafter, because there is his writing on the book of account. I am satisfied that talk took place there so that Mr. McKelway was justified in believing that this matter would not be sacrificed. There was a large note, with the interest being promptly paid on it—and it was paid promptly, I think—that would more than pay the interest on the Gross note and would be constantly cutting down the principal. The circumstances are ample for the court to find, and the court does find, that the fair understanding between the bank and the representative of this estate was that nothing should be done toward a foreclosure of that note, without some actual notice to him.

"I think equity requires it; I think the plainest kind of honesty requires it; and, that being the case, I think there should be a decree for the complainant."

We respectfully submit to this Honorable Court that the decree below should be affirmed.

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Attorneys for Appellee